

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2011 JUL 28 P 4:59

1. Minutes of the City Council Meeting, July 18, 2011
2. PUBLIC HEARING On the Application for Special Permit from AT & T Wireless PCS, LLC to modify an existing Special Permit (Order No. 03-100112B) to accommodate three additional panel antennae for 4G wireless network, associated cabling and equipment at 445 Simarano Dr., Order No. 11-1002954.
3. PUBLIC HEARING On the Application for Special Permit from AT & T Wireless PCS, LLC to modify an existing Special Permit (Order No. 97-6754F) to accommodate three additional panel antennae for 4G wireless network, associated cabling and equipment at 75 Donald Lynch Blvd., Order No. 11-1002955.
4. PUBLIC HEARING On the Application for Special Permit from AT & T Wireless PCS, LLC to modify an existing Special Permit (Order No. 08/09-1002083B) to accommodate three additional panel antennae for 4G wireless network, associated cabling and equipment at 860 Boston Post Rd., Order No. 11-1002956.
5. Communication from the Mayor re: Assessor's Office transfer request in the amount of \$134,000.00 which moves funds from Overlay Reserve to Real Property Valuation Services.
6. Communication from the Mayor re: Fire Transfer Department request in the amounts of \$7,547.42 which moves funds from Firefighter to OT and \$29,638.80 which moves funds from Firefighter to OT as detailed on the attached spreadsheets.
7. Communication from the Mayor re: Proposed Order for a Home Rule Petition Amending Special Legislation which created the Traffic Commission.
8. Communication from the Mayor re: Municipal Aggregation Program-Proposed Pre-Qualification of Additional Suppliers of Electricity, X Order No. 06-1001337A.
9. Communication from City Solicitor Rider re: Special Permit of Marlborough Hospital in proper legal form, Order No. 11-1002924A.
10. Communication from Councilor Tunnera re: Zoning Amendment, Affordable Housing.
11. Communication from Attorney Bergeron re: Melanson Development, Request for Land Transfer Withdrawal, Order No. 10/11-1002732A.
12. Application for Special Permit from Marlborough/Northborough Land Realty Trust to construct a development consisting of 5 multi-family residential buildings, with clubhouse, containing a total of 290 units on Rt. 20, Map 78, Lots 12, 14, 38 and 39.
13. Minutes, Traffic Commission, May 6, 2011.
14. Minutes, Planning Board, June 6 & 20, 2011.
15. CLAIMS:
 - A. Lawrence Goodman, 100 Houde St., residential mailbox claim, 2(a)
 - B. Doreen Horne, 25 Butler Circle, other property damage

REPORTS OF COMMITTEES:

UNFINISHED BUSINESS:



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

**Lisa M. Thomas
140 Main St.**

**Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
JULY 18, 2011**

Regular meeting of the City Council held on Monday, JULY 18, 2011 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Seymour, Clancy, and Landers. Meeting adjourned at 9:00 PM.

ORDERED: That the minutes of the City Council Meeting JUNE 20, 2011 **FILE AS AMENDED**; adopted.

ORDERED: That the minutes of the City Council Meeting MAY 23, 2011 **FILE AS AMENDED**; adopted.

ORDERED: That the PUBLIC HEARING On the Application for Special Permit from Marlborough Hospital at 157 Union St. to extend prior non-conforming use by constructing a cancer pavilion to be connected to the present main hospital building, and to reconfigure the site parking, which will result in an increase in lot coverage from 47.8% to 48.4% of the site, Order No. 11-1002924, all were heard who wish to be heard, hearing recessed at 8:50 p.m.

Councilors Present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Clancy & Landers.

Councilor Seymour abstained

ORDERED: That the Water Department transfer request in the amount of \$23,602.10 which moves funds from Fringes to the following accounts which are necessary to pay budgeted expenses associated with an employee's retirement, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 11990006-51500 \$23,602.10

Fringes

TO:

Acct. # 61090001-50740 \$4,761.14

SMEO Equipment Operator

Acct. # 61090003-51920 \$17,140.11

Sick Leave

Acct. # 61090003-51430 \$1,700.85

Longevity

ORDERED: That the City Clerk transfer request in the amount of \$13,986.13 which moves funds from Fringes to the following accounts which are necessary to pay budgeted expenses associated with an employee's retirement, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. #11990006-51500 \$13,986.13

Fringes

TO:

Acct. # 11610002-50770 \$12,482.13

Senior Clerk

Acct. # 11610003-51920 \$1,504.00

Sick Leave Buy Back

ORDERED: That the Brownfields 2011 Cleanup Grant awarded to the City in the amount of \$200,000.00 for removal of underground gasoline tanks and the cleanup of the contaminated soil at the former Jenney Gas Station located at 25 East Main St. to be used for purposes outlined in MGL, Chapter 44, Section 53A, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That TIF Proposal-Vestas Technology R & D Americas, Inc., 929 Boston Post Rd. East, refer to **FINANCE COMMITTEE**; adopted.

Councilor Ossing abstained

ORDERED: That the appointment of Janet Hevey as Human Services Manager, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Communication from Attorney Bergeron on behalf of Melanson Development to withdraw the Application for Special Permit to expand the non-conforming use of the existing Walker house and barn located on 93 Framingham Rd, Order No. 11-1002853B, **APPROVE WITHOUT PREJUDICE**; adopted.

ORDERED: That the Communication from Michael Staiti of WRT Management Corporation re: granting of liquor license to Vin Bin located at 91 Main St., **FILE**; adopted.

ORDERED: That the Communication from Mark Water, USAT Certified Race Instructor re: Westborough Sprint Marathon scheduled to take place on Sunday, August 14, 2011, **FILE**; adopted.

ORDERED: That the Communication from Marc and Amanda Millette re: Sewer problem at 148 Boston Post Rd East, Unit 1A, **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, AUGUST 29, 2011** as date for a **PUBLIC HEARING** on the Application for Special Permit from AT & T Wireless PCS, LLC to modify an existing Special Permit (Order No. 99-8280C) to accommodate three additional panel antennae for 4G wireless network, associated cabling and equipment at 450 Boston Post Rd., refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, AUGUST 29, 2011** as date for a **PUBLIC HEARING** on the Application for Special Permit from AT & T Wireless PCS, LLC to modify an existing Wireless Communications Facility pertinent to lease Order No. 96-6861 to accommodate three additional panel antennae for 4G wireless network, associated cabling and equipment at 91 Arnold St., refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, AUGUST 29, 2011** as date for a **PUBLIC HEARING** on the Application for Special Permit from AT & T Wireless PCS, LLC to modify an existing Wireless Communications Facility to accommodate three additional panel antennae for 4G wireless network, associated cabling and equipment at 4 Mount Royal Ave., refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, AUGUST 29, 2011** as date for a **PUBLIC HEARING** on the Application for Special Permit from AT & T Wireless PCS, LLC to modify an existing Wireless Communications Facility to accommodate three additional panel antennae for 4G wireless network, associated cabling and equipment at 157 Union St., refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

Councilor Seymour abstained

ORDERED: That the Minutes, Community Development Authority, May 26, 2011, **FILE**; adopted.

ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.

- A. Deborah MacDonald, 34 Deerfield Rd., Shrewsbury, pothole or other road defect
- B. Carol deOliveira, 209 Chapin Rd., Hudson, pothole or other road defect
- C. Dorothy Manning, 302 Lakeshore Dr., other property damage and/or personal injury
- D. Daniel Verrico, 266 Wilson St., pothole or other road defect
- E. Edward & Melissa Harnish, 12 Dean Rd., other property damage and/or personal injury

ORDERED: That the Roman Kimyagarov d/b/a Arthur & Sons Shoe Repair, for Junk Dealer's license at 107 Main St., **APPROVED**; adopted.

ORDERED: That the Application for Fuel Storage License, Finishmaster, at 272 Lincoln St., **APPROVED**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:00 p.m.



IN CITY COUNCIL

Marlborough, Mass., JUNE 20, 2011

ORDERED:

That there being no objection thereto set **MONDAY, AUGUST 1, 2011** as date for a **PUBLIC HEARING** on the Application for Special Permit from AT & T Wireless PCS, LLC to modify an existing Special Permit (Order No. 03-100112B) to accommodate three additional panel antennae for 4G wireless network, associated cabling and equipment at 445 Simarano Dr., be and is herewith refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE.**

ADOPTED

ORDER NO. 11-1002954
X-03-100112B



IN CITY COUNCIL

Marlborough, Mass., JUNE 20, 2011

ORDERED:

That there being no objection thereto set **MONDAY, AUGUST 1, 2011** as date for a **PUBLIC HEARING** on the Application for Special Permit from AT & T Wireless PCS, LLC to modify an existing Special Permit (Order No. 97-6754F) to accommodate three additional panel antennae for 4G wireless network, associated cabling and equipment at 75 Donald Lynch Blvd., be and is herewith refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE.**

ADOPTED

ORDER NO. 11-1002955
X-97-6754F



IN CITY COUNCIL

JUNE 20, 2011

Marlborough, Mass.,

ORDERED:

That there being no objection thereto set **MONDAY, AUGUST 1, 2011** as date for a **PUBLIC HEARING** on the Application for Special Permit from AT & T Wireless PCS, LLC to modify an existing Special Permit (Order No. 08/09-1002083B) to accommodate three additional panel antennae for 4G wireless network, associated cabling and equipment at 860 Boston Post Rd., be and is herewith refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE.**

ADOPTED

ORDER NO. 11-1002956
X-08/09-1002083B



City of Marlborough
Office of the Mayor

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610

Nancy E. Stevens
MAYOR

Krista J. Holmi
EXECUTIVE AIDE

Katherine M. LaRose
EXECUTIVE SECRETARY

July 27, 2011

Arthur G. Vigeant, President
Marlborough City Council
City Hall, 140 Main Street
Marlborough, MA 01752

RE: Transfer Request- Assessor's Office

Honorable President Vigeant and Councilors:

Attached herewith is a transfer request in the total amount of \$134,000.00. As detailed in the enclosed letter from Senior Assessor Dan Brogie, this anticipated transfer will restore the City Council's budget cut from the Real Property Valuation Services line item with funds from the Overlay Reserve.

As always, please feel free to contact me with any questions or concerns.

Sincerely,

Nancy E. Stevens
Mayor

Enclosures



City of Marlborough
Office of the Assessors
140 Main Street
Marlborough, Massachusetts 01752
TDD (508) 460-3610
Phone: (508) 460-3779

July 27, 2011

**Mayor Nancy Stevens
City of Marlborough**

RE: Transfer from Overlay Surplus to Valuation Services

Mayor Stevens:

The Board of Assessors has approved in an open meeting a transfer of \$134,000.00 from the FY 2008 overlay account to overlay surplus.

The board now requests that \$134,000.00 be transferred from overlay surplus to line item 11410004 53082 (Valuation Services).

The transfer is required in order to complete our fiscal year 2013 triennial recertification required by the Mass. Department of Revenue.

Thank you for your attention to this matter.

**Daniel C. Brogie
Senior Assessor
Member – Board of Assessors**

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Assessor

FISCAL YEAR: 2012

FROM ACCOUNT:

TO ACCOUNT:

Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance		
<u>\$134,000</u>	<u>\$134,000.00</u>	<u>10000</u>	<u>-</u>	<u>32200</u>	<u>Overlay Reserve</u>	<u>\$134,000.00</u>	<u>11410004</u>	<u>-</u>	<u>53082</u>	<u>Real Property Valuation Serv</u>	<u>\$24,200</u>

Reason: The Real Property Valuation Services line was cut \$134,000 by the City Council with the intent to use Overlay Surplus



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July 27, 2011

Arthur G. Vigeant, President
Marlborough City Council
City Hall, 140 Main Street
Marlborough, MA 01752

RE: Transfer Requests- Fire

Honorable President Vigeant and Councilors:

Attached herewith are the following intra-department transfer requests:

Transfer in the amount of \$7,547.42 moving funds from account number 12200001-50450 (Firefighter) to account number 12200003-51300 (OT).

Transfer in the amount of \$29,638.80 moving funds from account number 12200001-50450 (Firefighter) to account number 12200003-51300 (OT).

As detailed in the attached transfer sheets, funds are available within existing line items to cover overtime requirements. As always, please feel free to contact me with any questions or concerns.

Sincerely,

Nancy E. Stevens
Mayor

Enclosures

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Fire

FISCAL YEAR: 2012

Available Balance	FROM ACCOUNT:				TO ACCOUNT:				Available Balance
	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	
<u>\$3,082,134</u>	<u>\$7,547.42</u>	<u>12200001</u>	<u>50450</u>	<u>Firefighter</u>	<u>\$7,547.42</u>	<u>12200003</u>	<u>51300</u>	<u>OT</u>	<u>\$86,490</u>
	Reason:	<u>Transfer is available due to 111F payments being made to injured Firefighters.</u>							
	Reason:	_____							
	Reason:	_____							
	Reason:	_____							

Department Head signature: *Ricky A. Plummer*

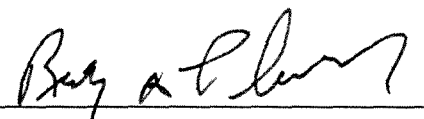
Mayor's signature: _____

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Fire

FISCAL YEAR: 2012

Available Balance	FROM ACCOUNT:				TO ACCOUNT:				Available Balance
	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	
<u>\$3,082,134</u>	<u>\$29,638.80</u>	<u>12200001</u>	<u>50450</u>	<u>Firefighter</u>	<u>\$29,638.80</u>	<u>12200003</u>	<u>51300</u>	<u>OT</u>	<u>\$86,490</u>
	Reason:	<u>The budgeted hiring of three new firefighters in October has been postponed until Jan 2012. The postponement allows the transfer of funds</u>							
	Reason:	_____							
	Reason:	_____							
	Reason:	_____							

Department Head signature: 

Mayor's signature: _____



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July 27, 2011

Arthur Vigeant, President
Marlborough City Council
City Hall, 140 Main Street
Marlborough, Ma 01752

RE: Proposed Order for a Home Rule Petition Amending Special Legislation
Which Created the Traffic Commission

Honorable President Vigeant and Councilors:

Enclosed is a proposed order concerning a Home Rule Petition to amend the special legislation which created the Traffic Commission. Section 1 of the special legislation dictates the positions which comprise membership of the Traffic Commission. Section 1 has also been the subject of amendments which have substituted different positions as the needs of the City have evolved. For example, Chapter 83 of the Acts of 1995 amended the 1989 special legislation, known as Chapter 55 of the Acts of 1989, to substitute the city engineer's position for the city planner's position. That position reverted back to the city planner by means of yet another special legislation amendment, Chapter 158 of the Acts of 2000.

Amending special legislation in response to changes in positions is cumbersome and time consuming. Recently, the commission has had difficulty in achieving a quorum due to the lack of the city planner and illness of members. The attached proposed order would allow a mayor to appoint members if a vacancy occurs, either permanently or temporarily, without further special legislation.

As always, please feel free to call with any questions or concerns. Thank you for your attention to this matter.

Sincerely,

Nancy E. Stevens
Mayor

Enclosure

cc: Mark Leonard, Chief of Police

ORDERED:

That a petition to the General Court, accompanied by a bill for further amendment to Section 1 of Chapter 55 of the Acts of 1989, as amended by Section 1 of Chapter 83 of the Acts of 1995 and Chapter 158 of the Acts of 2000, a special law relating to the city of Marlborough, to be filed with an attested copy of this order, be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only, said further amendment to Section 1 to be made by adding the following sentences:

"Section 1. If one or more of the previously named positions is vacant, or as need arises, the Mayor shall fill said vacancy with a member(s) qualified to act. This amendment shall take effect upon its passage."

ADOPTED
In City Council
Order No. 11-

Adopted

Approved by Mayor
Nancy E. Stevens
Date:

A TRUE COPY
ATTEST:



City of Marlborough
Office of the Mayor

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July 28, 2011

Arthur G. Vigeant, President
Marlborough City Council
City Hall, 140 Main Street
Marlborough, MA 01752

RE: Municipal Aggregation Program -
Proposed Pre-Qualification of Additional Suppliers of Electricity

Honorable President Vigeant and Councilors:

As you are aware, in 2006 and 2007 the City Council approved the forms of contract that had been submitted by various suppliers of electricity for the City's municipal aggregation program. Those suppliers were ConEdison Solutions, Direct Energy, Dominion Retail, Gexa Energy (n/k/a NextEra), and Hess Corporation.

I am now advised by Colonial Power Group, our broker/consultant, that the City would stand to benefit if the number of potential suppliers were expanded to include the following:

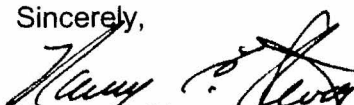
- Constellation
- Easy Energy LLC
- GDF SUEZ Energy North America
- Halifax-American Operating Co.
- Hampshire Council of Governments
- Integrys Energy Services, Inc.
- Noble Americas Energy Solutions
- Patriot Energy Group
- TransCanada Power Marketing Ltd.

Accordingly, I ask that the Council consider qualifying these potential suppliers prior to the bidding process this coming Fall, when the current supply agreement with ConEdison Solutions will be expiring (after the first meter read in November):

Further, as part of this pre-qualification process, I enclose a form of the Competitive Electric Supply Agreement presently being used with ConEdison Solutions. The City would require that all pre-qualified suppliers agree to honor that basic Agreement with, of course, non-substantive changes you have previously authorized me to make.

As always, I am available to contact me with any questions or concerns.

Sincerely,


Nancy E. Stevens
Mayor

Enclosure

COMPETITIVE ELECTRIC SUPPLY AGREEMENT

WHEREAS, the Massachusetts Legislature has adopted Chapter 164 of the Acts of 1997, (“Restructuring Act”), which, *inter alia*, (1) allows for competition in the generation and supply of electricity to customers, (2) authorizes municipalities to aggregate the electrical load of electricity consumers within their boundaries, and (3) allows municipal aggregators to formulate an aggregation plan and conduct aggregation programs;

WHEREAS, the City of Marlborough (“City”) has developed a Community Choice Power Supply Program to aggregate consumers located within Marlborough presently receiving Basic Service and to negotiate competitive rates for the supply of electricity for such consumers;

WHEREAS, the City has received approval of its Community Choice Power Supply Program from the Massachusetts Department of Telecommunications and Energy (“DTE”) (now, the Department of Public Utilities (“DPU”)) in DTE 06-102;

WHEREAS, _____, a _____ corporation duly authorized to conduct business in the Commonwealth of Massachusetts (“Supplier”), desires to provide All-Requirements Power Supply to those Basic Service consumers located within the City, pursuant to the terms and conditions of the City’s Community Choice Power Supply Program and this Agreement; and

WHEREAS, the City desires that the Supplier provide competitive retail power supply as an alternative to Basic Service for consumers within Marlborough.

NOW THEREFORE, IT IS AGREED THAT, the City and the Supplier hereby enter into this Competitive Electric Supply Agreement (“Agreement”) subject to the terms and conditions below.

ARTICLE 1 DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

1.1 Aggregation Plan - The “City of Marlborough Community Choice Power Supply Plan” as adopted or amended by the City, from time to time, and as approved by the DPU on March 14, 2007 in DTE 06-102. The Aggregation Plan is a plan developed by the City to aggregate electricity consumers for the primary purpose of negotiating the best rates for the supply and distribution of electricity for such consumers.

1.2 Aggregation Program - The Community Choice Power Supply Program, described in, and implemented under, the Aggregation Plan.

1.3 **Agreement** - This Competitive Electric Supply Agreement.

1.4 **All-Requirements Power Supply** – The service under which the Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission and distribution losses, congestion management, and other such services or products necessary for firm power supply to Participating Consumers at the Point of Sale.

1.5 **Bankruptcy** - With respect to a Party that such Party (i) ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any corporate action to authorize or that is in contemplation of the actions set forth in this clause (i); or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and, such proceeding is not dismissed within ninety (90) days after the commencement, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any such stay, has not been vacated, *provided that*, notwithstanding the foregoing, the exercise of rights to take over operation of a Party's assets, or to foreclose on any of a Party's assets, by a secured creditor of such Party (including the appointment of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.

1.6 **Basic Service** - As defined in G.L. c. 164, §1 and in orders of the Massachusetts DPU, as amended or promulgated, as the case may be, from time to time.

1.7 **Commercially Reasonable** - Any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations.

1.8 **Consumer** – A residential, commercial, industrial, municipal, or other consumer of electricity who receives electric supply through the Distribution Company's distribution or transmission service from any supplier, at one or more locations within the geographic boundaries of the City.

1.9 **Distribution Company** –The Massachusetts Electric Company (d/b/a National Grid), or any successor company(ies) or entity(ies) providing electricity distribution services in the City.

1.10 **DTE** - The Massachusetts Department of Telecommunications and Energy, now the Massachusetts Department of Public Utilities (“DPU”) or any successor state agency.

1.1 **EDI** – Electronic Data Interchange.: The exchange of business data in a standardized format between business computer systems

1.12 **Effective Date** - The effective date of this Agreement, pursuant to Article 4 (Term of Contract and Termination) below.

1.13 **Eligible Consumer** - A residential, commercial, industrial, municipal, or other consumer of electricity who is receiving Basic Service from the Distribution Company as of the Effective Date of this Agreement or any consumer who physically relocates into the City and would be automatically enrolled to receive electric supply service under the Distribution Company’s Basic Service tariff. All Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the City, as such boundaries exist on the Effective Date of this Agreement.

1.14 **Force Majeure** - Any cause not within the reasonable control of the affected Party which precludes that party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any discretionary acts, failures to act or orders of any kind by the City may not be asserted as an event of Force Majeure by the City; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of Force Majeure.

1.15 **General Communications** - The type of communications described and defined in Article 5.7 (General Communications) herein.

1.16 **Governmental Authority** - Any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, excluding the City.

1.17 **Governmental Rule** - Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law.

1.18 **Green Power** – Electric energy generated by equipment or facilities including solar power, biomass, landfill gas, wind turbine, hydro power or other renewable energy generating resource

or technology, as may be defined by G.L. c. 25 A, §11F or G.L. c. 164, §1, or, that may be otherwise added by mutual agreement of the Parties.

1.19 **ISO** - The New England Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New England and the bulk transmission of electricity throughout the New England power grid.

1.20 **kWh, kW** - Kilowatt-hour and kilowatts, respectively.

1.21 **NEPOOL** – The New England Power Pool.

1.22 **Participating Consumer** - All Eligible Consumers, excluding those Eligible Consumers who exercise their ability to opt-out, whether prior to the automatic enrollment or anytime thereafter. A Participating Consumer who chooses to opt-out of the Power Supply Program at any time may return to supply by the Supplier at the Supplier’s discretion at a price to be determined by the then-prevailing market conditions.

1.23 **Parties** - The City and Supplier, as the context requires. In the singular, “Party” shall refer to any one of the preceding.

1.24 **Point of Delivery** - The point of interconnection between NEPOOL Pool Transmission Facilities and the transmission facilities of the Distribution Company.

1.25 **Point of Sale** - The electric meter for each Participating Consumer’s account, as designated by the Distribution Company.

1.26 **Power Supply Program** - A municipal aggregation program developed by the City pursuant to its Aggregation Plan to provide choice for Eligible Consumers through competitive supply.

1.27 **Restructuring Act** - Chapter 164 of the Massachusetts Acts of 1997.

1.28 **Supplier** —~~Consolidated Edison Solutions, Inc.~~, a New York corporation duly authorized to conduct business in the Commonwealth of Massachusetts.

ARTICLE 2 RIGHTS GRANTED

2.1 **General Description and Limitations** - The Supplier is hereby granted the exclusive right to provide All-Requirements Power Supply to Participating Consumers pursuant to the terms and conditions set forth in this Agreement. Supplier is hereby granted the right to provide All-Requirements Power Supply to Participating Consumers pursuant to the terms of the City’s Power Supply Program, and expressly conditioned on the terms and conditions set forth in this Agreement. In accepting this grant, the Parties recognize that the Supplier is only authorized to supply All-Requirements Power Supply to Participating Consumers, and that the Distribution Company will continue to have the right and obligation to supply electricity to all Eligible

Consumers or Participating Consumers who opt-out of the Power Supply Program and remain on, or return to, Basic Service, until changes in law, regulation or policy may allow otherwise. Supplier further recognizes that this Agreement does not guarantee that any individual Eligible Consumer will be served by the Supplier. All existing and any new Eligible Consumers shall be automatically enrolled in the Community Choice Power Supply Program, unless they choose to opt-out. In the event the geographic boundaries of the City change during the term of this Agreement, Supplier shall only be obligated to supply All-Requirements Service to those Participating Consumers located within the City as such boundaries existed on the Effective Date of this Agreement. As between the Parties, the Supplier has the sole obligation of making appropriate arrangements with the Distribution Company, and any arrangements which may be necessary with the ISO so that Participating Consumers receive the electricity supplies to be delivered pursuant to this Agreement. The City specifically authorizes the Distribution Company to provide, and Supplier the right to obtain and utilize as required, twelve months of historic usage prior to enrollment and billing data for each Participating Consumer in an electronic form after enrollment. Supplier must request historic usage data for individual Participating Consumers from the Distribution Company via EDI. If further action is required by the Distribution Company to authorize Supplier to receive such historical energy consumption and billing data, the City agrees to use Commercially Reasonable efforts, at Supplier's cost, to assist Supplier, if so requested by it, in obtaining such information for Participating Consumers, including, without limitation, assisting Supplier in obtaining permission from such Participating Consumers and/or the DPU, where necessary as a prerequisite to the provision of such information.

2.2 Agency Relationship - The City is authorized to act on behalf of the Eligible Consumers in contracting for electric supply for Eligible Consumers. In any litigation arising under this Agreement, only the City has the right to bring claims against the Supplier.

2.3 Compliance with Laws - By entering into this Agreement, the parties specifically represent that they have exercised due diligence to review and have fully complied with all relevant regulations and orders of the Federal Energy Regulatory Commission, the DPU, the Office of the Massachusetts Attorney General, and the Massachusetts Division of Energy Resources and any other governmental authorities having jurisdiction over any element of the transactions contemplated by this Agreement.

2.4 Conditions Precedent – The City's obligations under this Agreement shall be conditioned upon the Supplier fulfilling the following requirements:

- (i) maintain its Competitive Supplier license from the DPU (as such term is defined in the Distribution Company's Terms and Conditions - Competitive Suppliers);
- (ii) execute a Competitive Electric Supplier Service Agreement with the Distribution Company in a form reasonably satisfactory to Supplier;
- (iii) execute any appropriate ISO applications and agreements;
- (iv) obtaining authorization from the FERC to sell power at market-based rates;

(v) complete EDI testing with Distribution Company.

If Supplier has not fulfilled all such requirements by the date of this Agreement, either Party may terminate this Agreement without any liability to the other Party.

2.5 Ownership and Use of Consumer Data – Supplier acknowledges that the City shall have exclusive ownership of all right, title, and interest in and to all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available to Supplier as a result of execution of this Agreement. Supplier shall use Eligible Consumer data solely to provide All-Requirements Power Supply to Eligible Consumers and to render other services expressly required or permitted under this Agreement. Any other use of Eligible Consumer data without the prior written consent of the City is strictly prohibited. Except as expressly provided in this Agreement, Supplier shall not disclose any Eligible Consumer data to any third-party and Supplier shall take all reasonable measures to protect Eligible Consumer data from access by, or beneficial use for, any third-party. To the extent that the provision of All-Requirements Power Supply or other services under this Agreement requires that Supplier have access to or make use of any Eligible Consumer data, Supplier shall treat such Eligible Consumer data as confidential information. Supplier may use Eligible Consumer data to engage in direct marketing only during the term of this Agreement and subject to the terms set forth in Article 17.2 (Direct Marketing). A violation of this Article 2.5 shall be grounds for termination under Article 4.2(1). Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

ARTICLE 3 CUSTOMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT

3.1 Customer Choice - The Parties acknowledge and agree that all Participating Consumers have the right, pursuant to the Restructuring Act, to change their source of electricity supply, as set forth in Article 2.1. The City, or Participating Consumers, as the case may be, shall give reasonable notice of any such changes in accordance with any terms formulated by the DPU, the procedures established by the City, the Distribution Company and the Supplier pursuant to the terms included in Exhibit A and the Aggregation Plan. The Parties represent and warrant to each other that they shall not interfere with the right of Participating Consumers to opt-out of the Aggregation Plan, and shall comply with any rules, regulations or policies of the DPU, the Distribution Company and/or other lawful Governmental Authority regarding the procedures for opting out or of switching from one source of electric supply to another. Notwithstanding the foregoing, however, the Parties may make certain efforts with the intent of seeking commercial and industrial customers to affirmatively agree to remain in the Aggregation Program, consistent with any Governmental Rules.

3.2 Notification to Eligible Consumers of Opt-Out Rights - Consistent with the requirements of any Governmental Rules the Supplier shall notify all Eligible Consumers in the City of the date upon which they will be automatically enrolled in the Aggregation Program, and that the Supplier will be providing electrical supply to such Eligible Consumers subject to the opt-out provisions of the Restructuring Act, the Aggregation Plan, the Aggregation Program, and Exhibit

A. The opt-out notice shall be mailed to Eligible Consumers prior to the start of automatic enrollment. The Supplier, in its discretion as to form and content, shall: (i) prominently state all charges to be made by the Supplier; (ii) provide a summary of the prices and terms included in Exhibit A as well as fully disclose the prices and terms then being offered for Basic Service by the Distribution Company; and (iii) state how any Eligible Consumer may opt-out of the Power Supply Program prior to enrollment and remain on Basic Service from the Distribution Company, and (iv) state how all Participating Consumers, subsequent to enrollment, will also retain the right to opt-out at any time and return to Basic Service or choose a new competitive supplier without paying a fee or penalty to Supplier. All such notices must be approved in advance by the City, such approval not to be unreasonably withheld.

In providing the notifications set forth in this Article, and in otherwise conducting the activities in Article 3.4 below, the Supplier must rely upon information provided to it by the Distribution Company for the purpose of performing its obligations. Supplier will not be responsible for any errors or omissions in connection with its notification of Eligible Consumers resulting from errors or omissions in the information provided to it by the Distribution Company.

3.3 Education - Prior to and following the commencement of All-Requirements Power Supply hereunder, the Supplier will engage in a coordinated education program. The costs of this education program shall be borne by the Supplier, such costs not to exceed ten thousand dollars (\$10,000). Upon mutual agreement between the City and the Supplier concerning the content and method, the Supplier may conduct additional educational efforts at its sole expense.

3.4 Enrollment - All Eligible Consumers will be automatically enrolled in the Power Supply Program under the terms of Exhibit A. This enrollment shall be administratively arranged by Supplier and the Distribution Company, with the cooperation and reasonable support from the City, by identifying all Eligible Consumers and verifying customer account numbers, service and billing addresses, and other pertinent information. The Supplier shall also request (i) the electronic transfer of Participating Consumers from the Distribution Company to the Supplier; (ii) the removal of Eligible Consumers opting out of the Aggregation Program; and (iii) the transfer of resulting data through EDI compatible formats. In no event shall either Party be in any way responsible for the accuracy or timeliness of any information provided by the Distribution Company or any omissions therein. Eligible Consumers or Participating Consumers who have previously opted out or who have relocated to or within the City shall have the right to receive electrical supply from Supplier, subject to the prices and terms in Exhibit A.

At any time during this Agreement, Consumers who have previously opted out may return to supply by the Supplier at the Supplier's discretion at a price determined by the then-prevailing market conditions. Besides accurately and promptly transmitting information provided by such Eligible Consumers to the Distribution Company and following any procedural or other steps which may be mutually agreed to, Supplier shall have no obligation to effect adds and drops at Eligible Consumers' request, such processing being the responsibility of the Distribution Company.

Consumers being served under other competitive supply programs offered by third-parties will not be automatically enrolled as Consumers under this Agreement when such program terminates

or is otherwise completed. Supplier agrees that Consumers under such third-party competitive supply programs may affirmatively opt in and receive All-Requirements Power Supply at the Supplier's discretion at a price determined by the then-prevailing market conditions. Supplier agrees that when such third-party competitive supply programs terminate, Supplier will negotiate with the City in good faith to include Consumers that had been enrolled in other programs as Eligible Consumers under this Agreement.

ARTICLE 4 TERM OF CONTRACT AND TERMINATION

4.1 Term - For the period commencing as of Participating Consumers' first meter read date after December 1, 2008 and terminating with Participating Consumers' first meter read date after May 1, 2010, the attached Exhibit A ("Prices and Terms") shall be applicable and in effect.

4.2 Termination - This Agreement may be terminated at any time upon written notice:

(1) by the City, or the Supplier, if either Party fails to remedy or cure any breach or default of any material provision or condition of this Agreement (including, but not limited to, Article 2.5 and Article 9) within sixty (60) days following written notice to do so by the non-breaching party; or

(2) by the City, or the Supplier, if any material provision or condition of this Agreement be finally adjudged invalid by any court of competent jurisdiction, or if the DPU exercises any lawful jurisdiction so as to invalidate or disapprove this Agreement in whole or in significant part; or

(3) by the City in the event of the failure of the Supplier to provide or arrange for All-Requirements Power Supply to Participating Consumers in accordance with Article 5.4; provided, however, in the event the Supplier has performed its obligations under Article 5.4 and its failure to provide or arrange All-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Distribution Company, or the ISO, Supplier's failure shall not be deemed an act of default, unless the Supplier's failure to provide or arrange All-Requirements Power Supply due to the actions or non-actions by any transmission service provider, the Distribution Company, or the ISO continues for a period of ninety (90) days or longer, in which event the Supplier's failure shall thereupon, without the need for a written notice to remedy or cure pursuant to Article 4.2(1), be deemed an act of default; provided further, however, that in such an event, neither Party shall be liable to the other Party or to any Participating Consumers for indirect or consequential damages or for direct and actual costs for electric energy otherwise arising as obligations upon termination pursuant to Article 4.3; or

(4) by the City, in the event that the financial sureties and guaranties provided by Supplier in connection with this Agreement are revoked, terminated, or otherwise fail.

4.3 Obligations upon Termination - Following termination of this Agreement, the Parties shall each discharge by performance all obligations due to the other Party that arose up to the date of termination of the Agreement. Upon the effective date of termination of the Agreement, all rights and privileges granted to the Supplier shall cease, with the exception of the right to collect all monies due for services rendered to that date.

If this Agreement is terminated under Article 4.2, neither the City nor the Supplier shall be liable to the other or to any Participating Consumers for any indirect or consequential damages resulting from such termination. Notwithstanding the foregoing or any other provision of this Agreement, if this Agreement is terminated by the City pursuant to Article 4.2(1), 4.2(3) as a result of Supplier's, rather than any transmission provider's, Distribution Company's or ISO's, action or inaction, and 4.2(4), Supplier's sole and exclusive liability shall be to pay to the City the following amounts, which the parties agree are a reasonable estimation of the direct and actual costs for electric energy that Participating Consumers would incur in the aggregate in excess of the prices established in this Agreement as a result of the termination of this Agreement on account of a breach by Supplier:

- For Period 1 (as defined in Exhibit A): \$92,000;
- For Period 2 (as defined in Exhibit A): \$55,000; and
- For Period 3 (as defined in Exhibit A): \$55,000.

Supplier shall be liable to the extent of the sums referenced above for the full amount of any remaining period(s) as well as a pro-ration of any partial period.

The Supplier specifically waives all rights it may have at law to claim that the City has no standing or otherwise lacks the authority to seek the sums set forth above on behalf of Participating Consumers in the event of a termination of this Agreement as a result of a breach by Supplier.

4.4 Extension – The Agreement may be extended beyond Participating Consumers' May 2010 meter read dates by mutual, written agreement entered into by the Parties prior to April 30, 2010. Any new pricing terms shall be added to and replace Exhibit A as Exhibit A-2. Upon any such extension, this Agreement shall continue to be in effect, and all provisions of the Agreement shall retain the same force and effect as before the extension, unless it is terminated by either Party pursuant to the provisions of Article 4.2 or until the date stated in such extension.

ARTICLE 5 CONTINUING COVENANTS

The Supplier agrees and covenants to perform each of the following obligations during the term of this Agreement.

5.1 Standards of Management and Operations - In performing its obligations hereunder, during the term of this Agreement, the Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers a

safe and reliable supply of such amounts of electricity to the Point of Delivery as are required under this Agreement; that it complies with all relevant industry standards and practices for the generation and supply of electricity to Participating Consumers; and that, at all times with respect to Participating Consumers, it exercises good practice for an electricity supplier and employs Commercially Reasonable skills, systems and methods available to it.

5.2 Local Customer Service Access - The Supplier agrees to provide, or cause to be provided, certain customer services to Participating Consumers. Such services shall be reasonably accessible to all Participating Consumers, shall be available during normal working hours, shall allow Participating Consumers to transact business they may have with the Supplier, and shall serve as a communications liaison among the Supplier, the City, and the Distribution Company. A toll-free telephone number will be established by Supplier and be available for Participating Consumers to contact Supplier during normal business hours (9:00 a.m.- 5:00 p.m. Eastern Standard Time) to resolve concerns, answer questions and transact business with respect to the service received from Supplier. Supplier and the City agree to develop an augmented schedule for staffing the customer service center during periods when All-Requirements Power Supply commences under the Aggregation Program. Supplier will also provide a link on its website to a website which will be available to Participating Consumers for general information, product and service information, and other purposes.

5.3 Responding to Requests for Information - To the extent authorized by the Participating Consumer(s) and to the extent such individual permission is required by law, the Supplier shall, during normal business hours, respond promptly and without charge therefore to reasonable requests of the City for information or explanation regarding the matters covered by this Agreement and the supply of electricity to Participating Consumers. Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s). Whenever necessary to comply with this Article 5.3, the service representative(s) shall call upon other employees or agents of the Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this Article 5.3 shall be interpreted as limiting the obligation of the Supplier to respond to complaints or inquiries from Participating Consumers, or to comply with any regulation of the DPU or Attorney General of the Commonwealth regarding customer service.

5.4 Arranging for Firm All-Requirements Power Supply - Supplier shall participate in or make appropriate arrangements with the ISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of reliable, safe, firm, All-Requirements Power Supply to the Distribution Company for delivery to Participating Consumers, and take Commercially Reasonable steps to cooperate with the NEPOOL, the ISO or any other entity to ensure a source of back-up power in the event that the facilities owned or controlled by Supplier's affiliates or other sources of power supply are unable to generate and/or deliver All-Requirements Power Supply to the Point of Delivery. In the event the Supplier fails to deliver sufficient electricity to the grid to serve Participating Consumers, the Supplier shall utilize such arrangements as may be necessary to continue to serve Participating Consumers under the terms of this Agreement; shall forthwith notify, in writing, the City and its consultant both as to such failure by the Supplier as well as to such arrangements being utilized by the

Supplier; and shall bear any costs it may incur in carrying out these obligations to the extent that such failure to deliver sufficient electricity to the grid to serve Participating Consumers results directly from Supplier's acts or omissions. Notwithstanding the foregoing, Supplier shall not be responsible to the City or any Participating Consumers in the event the Distribution Company disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by the ISO) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Distribution Company's facilities, to maintain the safety and reliability of the Distribution Company's electrical system, or due to any other reason, including emergencies, forced outages, potential overloading of the Distribution Company's transmission and/or distribution circuits, Force Majeure or the non-payment of any distribution service costs or other such costs due for services provided by the Distribution Company to a Participating Consumer.

5.5 Non-Discriminatory Provision of Service - Supplier shall supply electric energy to the Point of Delivery for all Eligible Consumers who receive local distribution and transmission service from the Distribution Company in the City and who do not opt out, or, having opted out, request service, except as provided below in this Article 5.5. Subject to the prices and terms contained in Exhibit A, Supplier shall deliver electricity on a non-discriminatory basis; provided, however, that prices and other terms may vary in accordance with reasonably established classes of customers (e.g., residential, commercial, municipal, industrial) or by such other categories as appear in Exhibit A. To the extent applicable, Supplier's prices, terms and conditions shall be in accordance with the Massachusetts General Laws, the regulations of the DPU, and other applicable provision of law. To the extent required by law and/or the conditions of any DPU approval of this Agreement, the Supplier may not deny service to an Eligible Consumer for failure to pay the bills of any other electric company (whether engaged in the distribution, transmission, or generation of electricity) or of any other aggregator, marketer or broker of electricity, but may reasonably deny or condition new service, or terminate existing service, based upon any Participating Consumer's failure to pay bills from the Supplier, subject to any provisions of law. Provision of electric energy supply shall be subject to Supplier's standard credit policies, to the extent permitted by law, as described in Exhibit A.

5.6 Approval of General Communications - Supplier shall cooperate with the City in the drafting and sending of messages and information to Eligible Consumers and/or Participating Consumers concerning the Aggregation Program or any matter arising under or related to this Agreement. Supplier shall, prior to sending any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "General Communications") to Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual consumer), provide a copy of such General Communication to the City for its review to determine whether it is consistent with the purposes and goals of the City. The City shall have the right to disapprove such General Communications and suggest revisions if it finds the communication inconsistent with the purposes and goals of the City, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the City fails to respond within seven calendar days (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; (b) which has been approved

by the DPU, the Division of Energy Resources, or any other Governmental Authority; or (c) in the nature of routine monthly or periodic bills, or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) or (b) above shall require approval. If the City objects to any General Communication on the grounds it is inconsistent with the purposes and goals of the City, the Supplier, after consultation as provided in this Article 5.7, may nevertheless elect to send such General Communication provided that it: (i) clearly indicates on such mailing that it has not been endorsed by the City, (ii) has previously provided all Participating Consumers a meaningful chance to opt not to receive such General Communications, (iii) has stated in connection with such chance to opt not to receive such communications that “the City wants to protect Consumers from receiving marketing materials if you do not wish to do so,” and (iv) has otherwise sought input from the City as to the means by which Consumers are given a chance to remove their names from any list which may receive General Communications. The City may reject or exclude any proposed General Communication that, in its reasonable judgment, is contrary to the interests and objectives of the Aggregation Program or the City.

5.7 Communication Inserts and Messages - Supplier agrees that if it communicates with Participating Consumers directly, and unless prevented for regulatory or other such reasons from doing so, it shall allow the City to include no less than three inserts per year into such communications, provided that the City pays the cost of printing and reproducing such insert and any incremental postage or handling costs the Supplier may incur as a result of including such insert. Supplier shall have the right to disapprove such General Communications (that is communications other than those pertaining to the City’s demand-side management, energy efficiency programs and technology, and renewable energy programs, if applicable) and suggest revisions if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Supplier fails to respond within seven calendar days (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication which has been ordered by the DPU, the Division of Energy Resources, or any other Governmental Authority to be so communicated.

5.8 Participating Consumer Lists - To the extent not prohibited by any Governmental Rule or expressly by any Participating Consumer(s), the Supplier shall, upon request of the City, provide a list of the Participating Consumers being served by the Supplier, including such reasonable identifying and aggregate consumption information as the City may also request to the extent such information is available to Supplier. Supplier shall provide such Participating Consumer lists in an electronic format reasonably acceptable to both Parties and with no more frequency than once a month.

5.9 Compliance with Laws - The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this Agreement.

5.10 Consent - Whenever performance of an obligation of any Party hereto requires the consent or approval of any Governmental Authority, such Party shall make Commercially Reasonable efforts to obtain such consent or approval. In the event the Supplier requests the City’s assistance

in obtaining such consent or approval and the City anticipates that it will incur costs in fulfilling the Supplier's request, it shall give the Supplier an estimate of such costs. Upon receiving the estimate, Supplier shall determine if it continues to request the City's assistance, and if so, the Supplier shall reimburse the City for all costs, up to the estimated dollar amount, reasonably incurred by the City in connection with such efforts.

ARTICLE 6 ROLE OF THE CITY

Under this Agreement, the City shall not actually receive, take title to, or be liable for the supply or delivery of All-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the City is to i) set the terms and conditions under which All-Requirements Power Supply will be provided by the Supplier under this Agreement and to ensure that the Supplier complies with those terms and conditions, and ii) act as agent for the Eligible Consumers with respect to the matters addressed in this Agreement. It is the sole obligation of the Supplier to arrange for delivery of All-Requirements Power Supply to Participating Consumers. The Parties agree that City is not a "distribution company," "electric company," "generation company" or "transmission company" within the meaning of G.L. c. 164, §1 as a result of this Agreement, unless a court, the DPU, or other lawful authority shall adjudicate to the contrary; provided, however, that the City may be considered to be operating a municipal load aggregation program pursuant to G.L. c. 164, §134. The Supplier hereby agrees that it will take no action that would make the City liable to any Eligible or Participating Consumer due to any act or failure to act on the part of the Supplier relating to the delivery or supply of All-Requirements Power Supply.

ARTICLE 7 PRICES AND SERVICES; BILLING

7.1 Schedule of Prices and Terms - The Supplier agrees to provide All-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms included in Exhibit A to this Agreement, which Exhibit is hereby incorporated by reference into this Agreement.

7.2 Obligation to Serve - As between the Parties, Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide All-Requirements Power Supply for all of the Participating Consumers under the Aggregation Program. Supplier shall make appropriate arrangements to obtain such capacity, electrical energy, and ancillary services for load-following purposes, including, but not limited to, spinning reserves, supplemental reserves, backup supplies and services as may be needed in the event of outages or emergencies, and all other ancillary services as necessary to provide a firm, reliable, and safe All-Requirements Power Supply for Participating Consumers to the Point of Delivery. Supplier, except as explicitly limited by the terms included in Exhibit A, shall be obligated to accept all Eligible Consumers who are or become participants in the City's Aggregation Program, regardless of their location or energy needs, subject to Supplier's standard credit policies (to the extent permitted by law), Article 5.5 (non-Discriminatory Provision of Service) hereof, Exhibit

A hereof and the terms of any approval or other order of the DPU with respect to this Agreement.

7.3 Metering and Billing - As between the Parties, the Supplier bears sole responsibility for any metering which may be required to bill Participating Consumers and for rendering of any bills to Participating Consumers. Supplier may discharge this obligation by making appropriate arrangements with the Distribution Company or any other entity. Any metering and billing functions carried out by the Supplier shall be conducted in compliance with relevant rules and regulations of the DPU and the Attorney General of the Commonwealth.

7.4 Terms and Conditions Pertaining to Individual Account Service

A. Title

Title to All-Requirements Power Supply will transfer from Supplier to Participating Consumers at the Point of Sale. Possession of, and risk of loss related to, All-Requirements Power Supply will transfer from Supplier to the Distribution Company at the Point of Delivery.

B. Term

Delivery of All-Requirements Power Supply will begin on Participating Consumers' first meter read dates after December 1, 2008 as specified in Exhibit A, or as soon as necessary arrangements can be made with the Distribution Company thereafter and will end on the first meter reading date after May 1, 2010 unless extended in accordance with Article 4.4.

C. Billing and Payment

Unless otherwise specified in an Exhibit to this Agreement, all billing under this Agreement shall be based on the meter readings of each Participating Consumer's meter(s) performed by the Distribution Company. Supplier shall, or shall cause the Distribution Company or any other entity to, prepare and mail bills to Participating Consumers monthly. If the Supplier arranges for the Distribution Company to perform billing services, the Supplier shall adopt the billing and payment terms offered by the Distribution Company to its Basic Service customers unless the Supplier and Distribution Company otherwise agree. In the event that necessary billing data is not received from the Distribution Company in time to prepare monthly bills, Supplier reserves the right to issue a bill based on an estimate of the Participating Consumer's total kWh usage for that billing period. Any over-charge or under-charge will be accounted for in the next billing period for which actual meter data is available.

D. Regional and Local Transmission

The prices quoted in Exhibit A do not include current and future charges for distribution service costs collected by the Distribution Company under its distribution service tariff or

local transmission costs as may be imposed by the regional power pool, ISO, or individual electric utilities that have FERC transmission tariffs. It is Supplier's understanding that these costs will be collected by the Distribution Company under its transmission tariff charge. If in the future Supplier becomes responsible for such distribution or transmission costs, Supplier shall be entitled to collect such costs from Participating Consumers to the extent permitted by any Governmental Rules. These costs are "pass through" costs as determined by the appropriate regulatory agencies.

E. Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of All-Requirements Power Supply shall be included on the Participating Consumer's bill and shall be remitted to the appropriate taxing authority by Supplier. Participating Consumers shall be responsible for all taxes (except for taxes on Supplier's income) associated with sales under the Agreement. Participating Consumers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Supplier.

ARTICLE 8 DEVELOPMENT OR OFFERING OF RENEWABLE ENERGY SOURCES

The Supplier hereby agrees that it will comply with the applicable provisions of G.L. c. 25A, §11F and any regulations, orders or policies adopted pursuant thereto.

ARTICLE 9 SERVICE PROTECTIONS FOR RESIDENTIAL CUSTOMERS

Supplier agrees that it shall comply with the provisions of 220 CMR Parts 25, 27, 28 and 29, any amendments thereto, and any code of conduct or policies the DPU may adopt in accordance with G.L. c. 164, §1F(7). The Supplier shall, on or before November 26, 2008, provide to the City a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the City (which approval shall not be unreasonably withheld). Such written description shall also include the Supplier's plans for maintaining "service quality standards," as that phrase is used in §1F(7); for complying with the "affirmative choice" requirements of §1F(7); and for handling customer complaints, including any arbitration procedures. If the Participating Consumer(s) so permit(s) to the extent such permission is required by law or the terms of any DPU order with respect to this Agreement, the Supplier agrees to provide notice to the City of any customer complaints received from a Participating Consumer, and to grant the City the right to participate in resolution of the dispute, to the extent that such complaints relate directly to the Aggregation Program, and to the extent permitted by DPU regulations and other applicable law. The failure to timely submit such written description, or the submission of practices and procedures which materially fail to comply with DPU regulations and policies, shall be deemed grounds for termination of this Agreement, at the discretion of the City after providing written notice of such failure to the Supplier and allowing the Supplier sixty (60) days to cure such failure.

In addition, in the event of a dispute regarding an invoice or Supplier’s service under this Agreement, a customer may contact the Massachusetts Department of Public Utilities (“DPU”), formerly the Massachusetts Department of Telecommunications and Energy, which may refer the dispute to the Massachusetts Office for Dispute Resolution for mediation of a dispute between an electric customer, including a municipality, and a competitive supplier, if the amount in dispute is greater than one hundred dollars (\$100.00) and the subject of the dispute is within the DPU’s statutory and regulatory authority. .

ARTICLE 10 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

The Supplier agrees to conduct its operations and activities under this Agreement in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees.

ARTICLE 11 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

11.1 Power Supply Information

A. Quarterly Report of Sales

The Supplier shall provide the City and its consultant with a quarterly report of sales which will contain: (i) the actual kWh sales for each calendar month of the reporting period (calculated as defined below) and (ii) the number of customer accounts active in each calendar month of the reporting period. The quarterly report will be due to the City and its consultant within forty five (45) days following the close of each quarter (March 31, June 30, September 30, and December 31). The kWh sales and number of customer accounts shall be listed in the report both by rate code and rate name as shown on Exhibit B attached hereto. This information shall be provided in electronic format.

Monthly Sales Calculations (Per Account)

$$\text{Daily Average Usage (In Meter Reading Cycle)} = \frac{\text{TotalCycleMeter Reading}(kWh)}{\text{NumberDaysInMeter ReadingCycle}}$$

$$\text{Cycle Monthly Calendar Usage For each cycle} = \text{DailyAverageUsage} * \# \text{ DaysInMonth}$$

$$\text{Total Account Monthly Usage} = \sum_{\text{ForEachMonth}} \text{Cycle Monthly Calendar Usage}$$

B. Customer –Related Data

During the term of the All-Requirement Power Supply to individual accounts (as defined in Article 7.4B), Supplier will maintain customer-related data in electronic form as specified in Exhibit C attached hereto, and will make such data available to the City and its consultant upon request to the extent permitted by applicable law and regulation

C. Standard of Care

The Supplier shall use good utility practice in preparing and providing any information or data required under the Agreement. To the extent that Supplier determines that any information or data provided hereunder is in error, it shall provide such information or data to the City and its consultant within a Commercially Reasonable time.

11.2 Power Supply Report - Within fifteen (15) days of the end of the quarter, the Supplier shall present a copy of the current “Disclosure Label” required by the DPU of all Competitive Suppliers to be disclosed to their customers which includes information pertaining to Supplier’s power supply and a reasonably detailed description of the sources of Supplier’s power supply used to serve Participating Consumers pursuant to this Agreement, except to the extent such disclosure would violate any confidentiality obligations of Supplier. Supplier shall post the “Disclosure Label” on their website under the City of Marlborough Community Choice Power Supply Program.

11.3 Books and Records - The Supplier shall keep its books and records in accordance with any applicable regulations or guidelines of the DPU, the Federal Energy Regulatory Commission, and any other Governmental Authority. The City will have access to any reports mandated by the Securities and Exchange Commission which are available on the Internet “EDGAR” system. Upon reasonable request by the City and at the City’s expense, Supplier shall provide back-up for any charge under this Agreement questioned by the City.

11.4 Copies of Regulatory Reports and Filings - Upon reasonable request, the Supplier shall provide to the City a copy of each public periodic or incident-related report or record relating to this Agreement which it files with any Massachusetts or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless the Supplier is required by law or regulation to keep such reports confidential from the other Parties. The City shall treat any reports and/or filings received from Supplier as confidential information subject to the terms of Article 16. Supplier shall be reimbursed its reasonable costs of providing such copies.

ARTICLE 12 RESOLUTION OF DISPUTES; CHOICE OF LAW

12.1 Choice of Law - This Agreement and the rights of the Parties shall be interpreted and determined in accordance with the laws of the Commonwealth of Massachusetts.

12.2 Dispute Resolution – Unless otherwise provided for in this Agreement, the dispute resolutions procedures of this Article 12.2 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party(ies) involved in the dispute a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time is modified by written agreement of the Parties involved in the dispute. In the event that the parties involved in the dispute cannot resolve a dispute by informal negotiations, the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator and the mediation will be held in Boston, Massachusetts or other mutually agreed to venue. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator’s fees shall be shared equally by all parties involved in the dispute. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the venue for judicial enforcement shall be Middlesex Superior Court, Cambridge, Massachusetts. Notwithstanding the foregoing, injunctive relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. In any judicial action, the “Prevailing Party” shall be entitled to payment from the opposing Party of its reasonable costs and fees, including, but not limited to, reasonable attorneys’ fees, arising from the civil action. As used herein, the phrase “Prevailing Party” shall mean the Party who, in the reasonable judgment of the finder of fact, most substantially prevails in its claims or defenses in the civil action when such judgment is deemed final and non-appealable.

ARTICLE 13 INDEMNIFICATION

13.1 Indemnification by Supplier - Supplier shall indemnify, defend and hold harmless the City (“Indemnified Party”) and the Indemnified Party’s officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys’ fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising, directly or indirectly, from or in connection with (i) any material breach by Supplier of its obligations, covenants, representations or warranties contained in this Agreement and not resulting from the actions of the Distribution Company, the City or its employees or agents, or (ii) Supplier’s actions or omissions taken or made in connection with Supplier’s performance of this Agreement. Supplier further agrees, if requested by the City, to investigate, handle, respond to, and defend any such claim, demand, or suit at Supplier’s expense arising under this Article 13.1.

13.2 Notice of Indemnification Claims - If the City seeks indemnification pursuant to this Article 13, it shall notify Supplier of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. Upon written acknowledgment by the Supplier that it will assume the defense and indemnification of such claim, the Supplier may assert any defenses which are or would otherwise be available to the City.

13.3 Survival - Notwithstanding any provision contained herein, the provisions of this Article 13 and the Financial Sureties and Guaranties provided by Supplier pursuant to Article 15.2 (Additional Financial Sureties and Guarantees) shall survive the termination of this Agreement for a period of three (3) years with respect to i) any claims which occurred or arose prior to such termination and ii) any losses occurring as a result of the termination.

13.4 Duty to Mitigate – All Parties agree that they have a duty to mitigate damages and covenant that they will use Commercially Reasonable efforts to minimize any damages they may incur as a result of the other Party’s performance or non-performance of this Agreement.

ARTICLE 14 REPRESENTATIONS AND WARRANTIES

14.1 Representations and Warranties by Supplier - As a material inducement to entering into this Agreement, the Supplier hereby represents and warrants to the City as of the Effective Date of this Agreement as follows:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this Agreement;
- (ii) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- (iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;
- (iv) subject to the conditions set forth in Article 2.4, this Agreement constitutes a legal, valid and binding obligation of the Supplier enforceable against it in accordance with its terms, and the Supplier has all rights such that it can and will perform its obligations to the City in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor’s rights generally and general principles of equity;
- (v) no Bankruptcy is pending against it or to its knowledge threatened against it;

(vi) none of the documents or other written information furnished by or on behalf of Supplier to the City pursuant to this Agreement, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and

(vii) all information furnished by Supplier in response to the request for proposals for competitive electric supply services is true and accurate.

14.2 Representations and Warranties by the City - As a material inducement to entering into this Agreement, the City hereby represents and warrants to Supplier as of the effective date of this Agreement as follows:

(i) this Agreement constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms;

(ii) the execution, delivery and performance of this Agreement are within the City's powers, have been or will be duly authorized by all necessary action;

(iii) the City has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and

(iv) no Bankruptcy is pending or threatened against the City.

ARTICLE 15 INSURANCE AND OTHER FINANCIAL SURETIES AND GUARANTEES

15.1 Insurance - In order to help support the indemnifications provided in Article 13, and its other promises and covenants stated herein, Supplier shall secure and maintain, at its own expense, throughout the term of this Agreement, comprehensive commercial general liability insurance of at least \$2,000,000 combined single limit and excess liability coverage of at least \$5,000,000 with insurers and with the City named as additional insured. Supplier shall provide the City with evidence, reasonably satisfactory to the City, of its insurance hereunder, upon request. The detailed terms of Supplier's insurance are set forth in Exhibit D attached hereto.

15.2 Additional Financial Sureties and Guarantees - In addition to the insurance set forth in Article 15.1, above, the Supplier shall, within two (2) days of the Effective Date of this Agreement, deliver to the City financial security for its obligations hereunder, including, without limitation, the indemnification set forth in Article 13 (Indemnification), in the form of a payment guarantee from its corporate parent in the form attached hereto as Exhibit E.

The Supplier may change the type and amount of its financial security provided hereunder with the prior written consent of the City, such consent not to be unreasonably withheld.

Upon reasonable request during the term of this Agreement and on a continuing basis, Supplier will provide the City with Commercially Reasonable proof of its ability to meet its indemnification obligations to the City pursuant to this Agreement. Supplier will provide the City with a copy of its parent's annual report. Supplier also agrees to notify the City in the event that its parent's unsecured, senior long-term debt or current corporate credit rating (not supported by third party credit enhancements) is less than BBB- by Standard & Poor's Rating Group or less than BBB- by Fitch Investor Services, Inc. (a "Downgrade Event"). Should a Downgrade Event occur, the City may request that Supplier provide a letter of credit as a substitute form of security in an amount to be determined in accordance with the formula described in the preceding paragraph. Upon receipt of such notice, Supplier shall have three (3) business days in which to provide such letter of credit to the City.

ARTICLE 16 CONFIDENTIALITY

Supplier acknowledges that the City is subject to public records laws, including without limitation, G.L. c. 4, §7, cl. 26 and G.L. c. 66, §10. To the extent not prohibited by such laws, all Parties shall keep confidential, and shall not disseminate to any third party (other than such Party's affiliates) or use for any other purpose (except with written authorization, such authorization not to be unreasonably withheld), any information received from the other that is confidential or proprietary in nature unless legally compelled (by deposition, inquiry, request for production of documents, subpoena, civil investigative demand or similar process, or by order of a court or tribunal of competent jurisdiction, or in order to comply with applicable rules or requirements of any stock exchange, government department or agency or other Governmental Authority, or by requirements of any securities law or regulation or other Governmental Rule) or as necessary to enforce the terms of this Agreement. The Party receiving confidential or proprietary information shall have no obligation with respect to such information which: (i) is or becomes generally available to the public other than as a result of disclosure by the receiving Party; (ii) was in its possession prior to disclosure hereunder and which was not acquired directly or, to the Party's knowledge, indirectly from the disclosing Party; (iii) was received from a non-party to this Agreement who to the receiving Party's knowledge, was not subject to a confidentiality agreement or fiduciary obligation regarding information; (iv) was independently developed by the receiving Party without reference to the information.

Either Party may disclose the terms of this Agreement to its affiliates, and to its and officers, directors, employees, attorneys and accountants.

This Article 16 shall survive the termination of this Agreement for a period of two (2) years.

If any Party is compelled to disclose any confidential information of the other Party, such Party shall request that such disclosure be protected and maintained in confidence to the extent reasonable under the circumstances and use Commercially Reasonable efforts to protect or limit disclosure with respect to commercially sensitive terms. In addition, notwithstanding the public

records laws referenced above, such Party shall provide the other Party with prompt notice of the requirement to disclose confidential information in order to enable the other Party to seek an appropriate protective order or other remedy, and such Party shall consult with the other Party with respect to the other Party taking steps to resolve the scope of any required disclosure. In the event the Supplier requests the City's assistance in protecting the confidentiality of information and the City anticipates that it will incur costs in fulfilling the Supplier's request, it shall give the Supplier an estimate of such costs. Upon receiving the estimate, Supplier shall determine if it continues to request the City's assistance, and if so, the Supplier shall reimburse the City for all costs, up to the estimated amount, reasonably incurred by the City in connection with such efforts.

For the avoidance of doubt, the information related to this Agreement that is considered confidential and proprietary in nature shall include the following:

- (i) any account information related to the Participating Consumers including, without limitation, historic usage data, metering, and billing and payment information;
- (ii) any information regarding transactions entered into by Supplier and any third parties in connection with the provision of All-Requirements Power Supply;
- (iii) any list of Participating Consumers;
- (iv) any information disclosed by a Party during any settlement discussions;
- (v) Supplier's insurance policies;
- (vi) any financial security instrument(s) provided by Supplier, including, but not limited to, any guaranty or letter of credit provided in accordance with Section 15.2 of this Agreement;
- (vii) any non-public information provided by Supplier pursuant to Section 15.2 of this Agreement; and
- (viii) any information which either Party should reasonably understand to be confidential and proprietary by virtue of the sensitive nature of the information.

ARTICLE 17 MISCELLANEOUS

17.1 No Assignment Without Permission - Supplier shall not assign its rights and privileges under this Agreement without the prior written approval of the City. Such approval may be denied at the reasonable discretion of the City if it determines that the proposed assignee does not have at least the same financial ability as the assigning Supplier. Notwithstanding the foregoing, the City may not unreasonably withhold its consent to an assignment to an affiliated entity under common control or management with Supplier or Supplier's corporate parent. Supplier's assignee shall agree in writing to be bound by the terms and conditions of this

Agreement. The City may assign this Agreement without the prior consent of Supplier provided that the proposed assignee has at least the same financial ability as the City. The rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

17.2 Direct Marketing - Prior to the introduction of any new product or service which Supplier may wish to make available to Participating Consumers or other Consumers located within the City, Supplier agrees to (i) give the City written notice of such new product or service and (ii) subject to the entry into reasonable confidentiality terms to the extent permitted by law and mutually acceptable to the Parties, discuss with the City the possible inclusion of such new product or service in this or another aggregation program undertaken by the City. The Parties agree to negotiate in good faith the terms, conditions, and prices for such products and services which the Parties agree should be included in a City aggregation program.

Supplier also agrees not to engage in any direct marketing to any Participating Consumer that relies upon Supplier’s unique knowledge of, or access to, Participating Consumers gained as a result of this Agreement. For the purposes of this provision, “direct marketing” shall include any telephone call, mailing, electronic mail, or other contact between the Supplier and the Consumer. Broad-based programs of the Supplier that do not rely on unique knowledge or access gained through this Agreement will not constitute such “direct marketing.”

17.3 Notices - All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and addressed to:

if to Supplier to:

|

if to the City to:

Office of the Mayor
City Hall
140 Main Street
Marlborough, MA 01752
(508) 460-3770 (voice)
mayor@marlborough-ma.gov

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) if sent by mail, on the third business day after the day on which deposited in the United States

certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Any party may change its address and contact person for the purposes of this Article 17.3 by giving notice thereof in the manner required herein.

17.4 Changes in Emergency and Service Contact Persons - In the event that the name or telephone number of any emergency or service contact for the Supplier changes, Supplier shall give prompt notice to the City in the manner set forth in Article 17.3 (Notices). In the event that the name or telephone number of any such contact person for the City changes, prompt notice shall be given to the Supplier in the manner set forth in Article 17.3 (Notices).

17.5 Entire Agreement; Amendments - This Agreement and the Related Documents constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by all Parties hereto.

17.6 Force Majeure - If by reason of Force Majeure any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the Force Majeure, gives all other Parties hereto written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If any event of Force Majeure continues for a period of one hundred-eighty (180) days or longer, either Party may treat such an event as an event of default and may terminate this Agreement by sending the other Party a written notice of termination as set forth in Article 4.2 (Termination), in which event, neither Party shall be liable to the other Party or to any Participating Consumers for indirect or consequential damages or for direct and actual costs for electric energy otherwise arising as obligations upon termination pursuant to Article 4.3.

17.7 Expenses - Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including without limitation, all of its attorneys' fees and expenses.

17.8 No Joint Venture - Supplier will perform all services under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the City and the Supplier hereunder are individual and neither collective nor joint in nature.

17.9 **Joint Workproduct** - This Agreement shall be considered the workproduct of all Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

17.10 **Counterparts** - This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

17.11 **Third Parties**- The parties acknowledge that the Price for energy as described in Exhibit A includes a commission fee to be determined by the City and not to exceed \$0.001 (1 mil) per kWh of Participating Consumers' actual usage, which fee will be payable to a consultant to be chosen by the City.. The Supplier agrees to include this commission fee in the Price for energy and to make the monthly commission payments on behalf of Participating Consumers, and acknowledges this obligation as a material obligation of this agreement; provided however, that (i) this Agreement remains in full force and effect, and (ii) the commission fee shall only be paid following receipt by Supplier of the corresponding monthly payments of Participating Consumers. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties. Except as provided in this provision, there shall be no other third-party beneficiaries to this Agreement.

17.12 **Waiver** - No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party(ies) so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

17.13 **Cooperation** - Each Party acknowledges that this Agreement must be approved by the DPU and agree that they shall use Commercially Reasonable efforts to cooperate in seeking to secure such approval.

17.14 **Aggregation Plan** - Supplier agrees that it has been provided with and had a reasonable opportunity to read the Aggregation Plan. The Parties agree that the Aggregation Plan, in the forms as it exists on the Effective Date of this Agreement, is incorporated into this Agreement by reference, and that it shall be construed harmoniously to the greatest practicable extent; notwithstanding the foregoing, in the event of any conflict between this Agreement and the Aggregation Plan, this Agreement shall govern. The City will provide Supplier with amendments to the Aggregation as they are adopted; provided, however, that such amendments are not incorporated into this Agreement as a result of such adoption. Any amendments hereto must be made in accordance with Article 17.5 (Entire Agreement; Amendments) of this Agreement.

17.15 **Advertising Limitations** - The Supplier agrees not to use the name of the City of Marlborough, or make any reference to the City of Marlborough in any advertising or other information to be distributed publicly for marketing or educational purposes, unless the City expressly agrees in writing to such usage. Any proposed use of the name of the City of Marlborough must be submitted in writing for agreement and prior written approval, which shall not be unreasonably withheld, consistent with Article 5.7 (General Communications) hereof. The

City acknowledges that the Supplier's corporate affiliates own the exclusive right to the trademarked logo and trade name used by Supplier. No right, license or interest in this trademark and/or trade name is granted to the City hereunder, and the City agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

17.16 Press Releases - The Parties shall not issue a press release or make any public statement with respect to this Agreement without the prior written agreement of the other Party with respect to the form, substance and timing thereof, except either Party may make any such press release or public statement when the releasing Party is advised by its legal counsel that such a press release or public statement is required by law, regulation or stock exchange rules, provided however, in such event, the Parties shall use their reasonably good faith efforts to agree as to the form, substance and timing of such release or statement.

17.17 Headings and Captions - The headings and captions appearing in this Agreement are intended for reference only, and are not to be considered in construing this Agreement.

17.18 Survival of Obligations - Termination of this Agreement for any reason shall not relieve the City or the Supplier of any obligation accrued or accruing prior to such termination.

17.19 Remedies

A. General

Subject to the limitations set forth in section 17.19(B) below, the City and the Supplier reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement.

B. Limitations

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. Notwithstanding the foregoing, Supplier acknowledges that the preceding sentence shall not limit the City's rights under Article 13.1 (Indemnification) to seek indemnification from Supplier for consequential, punitive, or incidental damages or other such losses claimed by third-parties, subject to any limitation set forth in the Payment Guarantee.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Date last written below by the signatories hereto.

BY:

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

CITY OF MARLBOROUGH

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

APPROVED AS TO FORM:

Donald V. Rider, Jr.
City Solicitor
EXEMPT FROM G.L. C. 30B:

Beverly J. Sleeper
Chief Procurement Officer

**EXHIBIT A
PRICES AND TERMS
City of Marlborough Community Choice Power Supply Program**

Price by Customer Class

Rate Class	Price for Period 1 \$/kWh
Residential	
G-1, S-1	
G-2, G-3	

Terms for System Supply Service

Term: The Price and Terms stated on this Exhibit A will commence on Participating Consumers' first meter read dates after November 1, 2011 and continue until the Participating Consumers' first meter read dates after May 1, 2012, unless this Agreement is sooner terminated in accordance with section 4.2 of this Agreement.

Period 1 Pricing: The prices for the period between Participating Consumers' first meter reading date after November 1, 2011 and Participating Consumers' first meter reading date after May 1, 2012 ("Period 1" in the table above) will be determined by Supplier on or before October 31, 2011.

For Period 1, the Residential pricing will be at least \$.001/kWh less than the approved National Grid Fixed Basic Service Rate in effect for residential customers for the period November 1, 2011-April 30, 2012. The pricing for G-1, G-2, G-3, and S-1 customers will be at least \$.001/kWh less than the approved National Grid Fixed Basic Service Rate in effect for commercial customers for the period November 1, 2011-April 30, 2012.

The prices stated on this Exhibit A include all adders and ancillary charges, including the commission to be paid to the City's consultant pursuant to section 17.11.

Renewable Energy in System Supply: The Supplier shall include Renewable Energy in the All Requirements Power Supply mix in an amount equal to the DPU's Renewable Portfolio Standards in effect as of November 2011, as may be amended during the term of this Agreement, or pay all penalties imposed by the DPU related to Renewable Energy requirements.

Term: The period of delivery of All-Requirements Power Supply shall be consistent with the provisions of Article 4 and Exhibit A of this Agreement, as amended.

Customer Opt-Out: Participating Consumers are free to opt-out of the Power Supply Program utilizing established EDI drop protocols. Participating Consumers are to provide five (5) days' notice to the Supplier of such termination. There are no fees or charges for Participating Consumers to opt-out or terminate service.

Supplier's Standard Credit Policy: The Supplier will not require a credit review for any customer participating in the Power Supply Program, nor does it require any customer to post any security deposit as a condition for participation in the Power Supply Program. The Supplier may terminate service to a Participating Consumer and return such customer to Fixed Basic Service in the event that the customer fails to pay to Supplier amounts past-due greater than sixty days.

EXHIBIT B

TEMPLATE KWH SALES AND CUSTOMER ACCOUNTS DATA SUMMARY

Rate Code
Rate Name
Customer
No Accounts
January kWh
February kWh
March kWh
April kWh
May kWh
June kWh
July kWh
August kWh
September kWh
October kWh
November kWh
December kWh

EXHIBIT C

TERMS AND CONDITIONS FOR PROVISION OF CUSTOMER-RELATED DATA

Fieldname

Account
Service Name
Service Address *includes street no &street name
Service City
Service Zip
REV/ RATE
Phone Optional
Jan Use
Jan Demand Optional Based upon Service Type
Feb Use
Feb Demand Optional Based upon Service Type
March Use
March Demand Optional Based upon Service Type
April Use
April Demand Optional Based upon Service Type
May Use
May Demand Optional Based upon Service Type
June Use
June Demand Optional Based upon Service Type
July Use
July Demand Optional Based upon Service Type
August Use
August Demand Optional Based upon Service Type
Sept Use
Sept Demand Optional Based upon Service Type
Oct Use
Oct Demand Optional Based upon Service Type
Nov Use
Nov Demand Optional Based upon Service Type
Dec Use
Dec Demand Optional Based upon Service Type
Mail Address Optional
Mail City Optional
Mail Zip Optional

*Note Demand numbers are not always available and may not be provided

EXHIBIT D

INSURANCE

1. The Supplier shall maintain commercial general liability insurance throughout the term of the agreement and for a period of at least two years following the contract term.
2. The insurance may be provided on a claims-made basis. In the event such insurance is cancelled or non-renewed, Supplier agrees to provide a 36 month discovery period endorsement for obligations under this agreement.
3. The insurance shall include coverage for bodily injury liability, property damage liability, advertising injury liability and personal injury liability.
4. To the extent available at commercially reasonable terms and conditions, personal injury liability coverage shall include non-employment discrimination in accordance w/ AEGIS form 8100 (8/2005).
5. To the extent available at commercially reasonable terms and conditions, the insurance shall include Failure to Supply coverage and such coverage shall be in accordance with AEGIS form 8100(8/2005).
6. The insurance shall include blanket contractual liability coverage, including the power supply agreement between Supplier and City.
7. The limit of commercial general liability insurance shall be at least \$2 million each occurrence. Separate aggregate limits of \$2 million may be applicable to products and completed operations liability coverage and failure to supply liability coverage.
8. The Supplier shall maintain umbrella or excess liability insurance subject to a limit of at least \$5 million in addition to commercial general liability insurance policy limits.
9. Such liability insurance shall include City as additional insured, but only for obligations arising out of this agreement.
10. The policies shall be endorsed to require that such additional insured receive at least 30-days notice of cancellation or non-renewal.
11. Such insurance shall contain a standard separation of insureds clause, whereby the actions of one insured will not negate coverage for another insured.
12. Within 14 days of the date of Execution of this agreement, the Supplier shall provide the City with a certificate of insurance to evidence compliance with the requirements. Renewal certificates shall be provided automatically within 30 days of policy renewal throughout the term of the contract and two years following the contract term.

EXHIBIT E

FORM OF SECURITY

CONFIDENTIAL

**Provided Only to the
Department of Public Utilities
Subject to Motion for Protective Treatment of Confidential Information**



RECEIVED *City of Marlborough*
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
Legal Department

JUL 28 P 3 19 140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508) 460-3610

LEGAL@MARLBOROUGH-MA.GOV

DONALD V. RIDER, JR.
CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

BEVERLY J. SLEEPER
CHIEF PROCUREMENT OFFICER

ELLEN M. STAVROPOULOS
PARALEGAL

July 28, 2011

Arthur Vigeant
President
Marlborough City Council
140 Main Street
Marlborough, MA 01752

RE: Order No. 11-1002924
Special Permit Application
Marlborough Hospital Cancer Pavilion
157 Union Street

Dear President Vigeant and Members:

Pursuant to Chapter 650-59C(13) of the Marlborough Zoning Ordinance, I provide this letter as to the legal form of the City Council's proposed findings on the special permit application submitted by Marlborough Hospital. The application seeks to alter the preexisting nonconforming use of the site by adding a cancer pavilion to provide radiation therapy, chemotherapy and various related medical services to patients. As part of this project, the application also seeks to reconfigure the parking on the site so as to add a small amount of additional impervious area for parking that would increase the Hospital's lot coverage from 47.8% to 48.2%.

I have enclosed a copy of the proposed decision. I certify that that decision is in proper legal form.

Very truly yours,

Donald V. Rider, Jr.
City Solicitor

Enclosure

cc: Arthur Bergeron, Esquire

IN CITY COUNCIL

Marlborough, MA, August __, 2011

ORDERED:

DECISION FOR SPECIAL PERMIT

IN CITY COUNCIL

Special Permit Application of:
Marlborough Hospital
157 Union Street
Marlborough, MA 01752
Order No. 11-1002924

Locus:
157 Union Street
Assessors Map 43, Parcel 56

DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 11-1002924

The City Council of the City of Marlborough hereby **GRANTS** the application of Marlborough Hospital, as provided in the DECISION and subject to the following Procedural Findings and Findings of Facts and Conditions.

Decision date: August __, 2011

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the _____ day of August, 2011.

APPEALS

Appeals, if any, shall be made pursuant to Massachusetts General Laws, c. 40A, §17 and shall be filed within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, Massachusetts.

A TRUE COPY

ATTEST: _____ City Clerk

**In City Council
Marlborough, Massachusetts
August , 2011
Decision on a Special Permit Application**

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Marlborough Hospital, a Massachusetts non-profit corporation having a mailing address of 157 Union St., Marlborough, MA 01752 as provided in this Decision and subject to the following Findings of Facts and Conditions.

1. Marlborough Hospital, a Massachusetts non-profit corporation, having a mailing address of 157 Union St., Marlborough, MA 01752, is herein referred to as "Applicant."
2. Applicant is the owner of certain real property located at 157 Union Street, Marlborough, MA, as shown on the Marlborough Assessors Maps as Map 43, Parcel 56 (the "Premises"). The land is entirely located in a Residence A-3 zoning district. The Premises have been used as a hospital since before the creation of the Marlborough zoning ordinance.
3. The Applicant, on or about May 18, 2011, filed with the City Clerk of the City of Marlborough an application for a Special Permit under the provisions of Mass. Gen. Laws c. 40A, §§ 6 and 9 and Marlborough Zoning Ordinance Article IV, § 650-12(B) (the "Application"). Applicant intends to alter the preexisting nonconforming use of the Premises by adding a Cancer Pavilion to provide radiation therapy, chemotherapy and various related medical services to patients. As part of this project, Applicant intends to reconfigure the parking on the site and to add thereto a small amount of additional impervious area for parking. As a result of this change, the lot coverage of Applicant's lot will increase from 47.8% to 48.2%.
4. In connection with the Application, Applicant filed a Summary Impact Statement, certified list of abutters, filing fee and twenty-three (23) copies of the site plan further described in Condition #1 below.
5. The site plan was certified by the Building Inspector for the City of Marlborough, acting on behalf of the City Planner, as having complied with Marlborough Zoning Ordinance Article VIII, § 650-59, Section C, Paragraph 7.
6. Pursuant to the Rules and Regulations of the City Council and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing for the permit application and the City Clerk caused to be advertised said date in the Metrowest Daily News and sent notice of said hearing to abutters entitled to notice under law.
7. The Marlborough City Council, pursuant to Mass. Gen. Laws c. 40A, held a public hearing on July 18, 2011, concerning the said application. The hearing was opened and closed at that meeting.
8. Applicant presented testimony at the public hearing detailing the Application, and describing the nature of the cancer treatment services to be performed and its impact in making these services more available and convenient to residents of the community, while substantially

improving the environment in which those services are administered. A number of Marlborough residents spoke in favor of the proposed project. No resident spoke in opposition. In addition, Applicant presented additional detailed project information at the Urban Affairs Committee meeting which occurred on July 25, 2011. All comments by those attending the City Council public hearing have been duly considered in making this decision.

9. Applicant provided further written and oral documentation to the City Council's Urban Affairs Committee regarding the impacts of the proposed project, and proposed building and related site modifications, in the course of the Urban Affairs Committee meeting referred to above.

BASED UPON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT AND TAKES THE FOLLOWING ACTIONS:

A) The City Council finds that Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application.

B) The City Council finds that the proposed use of the site, subject to the conditions imposed below, will not be in conflict with the public health, safety, convenience and welfare and will not be detrimental or offensive. Further, the City Council finds that the proposed expanded use of the site, consistent with its current use, and of the structure and site as altered, will not be substantially more detrimental to the neighborhood than the continued use of the existing site and structure. The visual and drainage impacts from the proposed use will be mitigated, and the traffic impacts will be no more detrimental than current impacts. In addition, the City Council finds that the additional cancer treatment provided will provide a significant benefit to the residents of the City.

C) The City Council, pursuant to its authority under Mass. Gen. Laws c. 40A, §§ 6 and 9 and under Article IV, § 650-12, Paragraph B of the Marlborough Zoning Ordinance, GRANTS the Applicant a Special Permit to alter the pre-existing non-conforming use of the premises as specified in the plans referred to below (the "Project"), SUBJECT TO THE FOLLOWING CONDITIONS:

1. Compliance With Building Regulations. Construction and modification of all structures on the site is to be in accordance with all applicable building codes in effect in the City of Marlborough and Commonwealth of Massachusetts. The Project shall be constructed, maintained and operated according to the specifications, terms, and conditions of the Applicant's Special Permit Application and site plan (the "Site Plan"), as amended during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee. The Site Plan referred to in this condition is the 4-page set of plans filed with the Special Permit Application and is entitled "Plan to Accompany Special Permit Application for Marlborough Hospital Cancer Pavilion in Marlborough, Massachusetts" dated May 18, 2011, by Whitman & Bingham Associates LLC, as revised on July 22, 2011. All other terms, conditions, requirements, approvals, drawings, and renderings required hereunder are made a part of and incorporated herein as a condition of the issuance of this Special Permit.

2. Compliance With Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review, in accordance with the City of Marlborough Ordinance, prior to the issuance of the actual Building Permit. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to the Special Permit and no Occupancy Permit shall be issued until the Applicant complies with all conditions. Any non-compliance with changes, alterations, modifications or amendments required by Site Plan Review shall constitute a violation of this Special Permit. Subsequent Site Plan Review shall be consistent with the Conditions of this Special Permit and the Site Plan submitted, reviewed and approved by the City Council as the Special Permit granting authority. Any changes to the Site Plan which alter the traffic patterns within the site, require the removal of landscaping, or reduce the overall green space of the Project will require subsequent approval by the City Council.

3. Application and Documents. All plans, drawings, site evaluations, and documentation provided by the Applicant as part of this Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same.

4. Compliance with Local, State and Federal Laws. The Applicant agrees to comply with all rules, regulations, and ordinances of the City of Marlborough, Commonwealth of Massachusetts, and the Federal Government as they may apply to the construction, maintenance, and operation of Applicant's facility, as supplemented by applicable conditions of this Special Permit.

5. Incorporation of Plans and Drawings. All terms, conditions, requirements, approvals, plans, and drawings provided by the Applicant as part of this Special Permit Application and as amended during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, including the Site Plan, are herein incorporated into and become part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council. The Site Plan referred to in this condition is the site plan referred to in Condition #1 above.

6. Improvements Installed Prior to Certificate of Occupancy. All site improvements that have been shown in renderings and/or the Site Plan are conditions of this Special Permit and will be installed prior to the issuance of any temporary or permanent occupancy certificate; provided, however, that if all other work is completed between October 1, 2011 and June 1, 2012, all landscaping plants will be required to be installed by June 1, 2012. Applicant agrees that the permanent maintenance of the landscaping and the other site improvements is an ongoing condition of this Special Permit.

7. Drainage Improvements. Applicant shall, prior to the completion of the Project, and prior to obtaining a Certificate of Occupancy therefor, re-crown its driveway from Hudson Street and cause construction of stormwater detention facilities on Applicant's property that are sufficient, in the opinion of the City Engineer, to significantly reduce the likelihood that stormwater from the property will avoid being captured in the existing stormwater drainage structures in said driveway, or that said stormwater will surcharge from said structures. The

improvements approved by the City Engineer will include an Operation and Maintenance plan for the maintenance of said detention facilities.

8. No Modifications to Driveway Entrances. If any modifications are made to the driveway entrances and exits as shown on the Site Plan that in any way alter the traffic flows as represented in the final revision of the Site Plan submitted to the City Council as part of the Special Permit Application, and as revised during the Special Permit approval process, the Applicant shall return to the City Council for approval of these modifications to the Special Permit. Applicant shall apply for and obtain all necessary permits from the necessary parties.

9. Catch Basins. All catch basins shall be installed in accordance with the plans submitted to the City Council and/or the City Council's Urban Affairs Committee. The catch basins shall be monitored by the Applicant on a semi-annual basis with reports given by the Applicant to the City Engineer. The catch basins are to be cleaned annually, or at more frequent intervals, by the Applicant as determined necessary by the City Engineer.

10. Maintenance of Parking Areas. Parking areas will be swept and maintained as necessary. Pursuant to the provisions of Mass. Gen. Laws c. 90, § 18, the Applicant shall submit a written request and grant of authority to the Marlborough Traffic Commission (the "Commission") to promulgate legally enforceable rules and regulations for the control of on-site traffic and parking. Applicant shall be responsible for providing, installing, and maintaining all signage or markings required by the Commission. Such signage or markings shall meet the standards of the Manual on Uniform Traffic Control Devices. Signs demarcating compact spaces shall not detract from the "streetscape" established for the project as requested during Site Plan Review.

11. Compliance of Signs with Sign Ordinance. All building signage at the subject location shall comply with the City of Marlborough Sign Ordinance in effect at the issuance of the special permit without a variance.

12. Landscaping Maintenance. Applicant agrees to plant and maintain the Project landscaping as shown on the Site Plan as submitted to the City Council and/or the City Council's Urban Affairs Committee subject to Site Plan Review.

13. Fire Protection. Fire protection systems shall be acceptable in all respects to the City of Marlborough Fire Chief or his designee.

14. Offsite Fencing. Applicant shall, prior to the completion of the Project, and prior to obtaining a Certificate of Occupancy therefor, reimburse the owner of the property located at 46 Belleview Avenue, which property directly abuts a proposed storage area of Applicant, for the cost of replacing said abutter's existing rear fence with an 8-foot tongue & groove PVC board fence, all as further described to the Urban Affairs Committee during the consideration of this Special Permit.

15. In accordance with the provisions of Mass. Gen. Laws c. 40A, § 11, the Applicant, at its expense, shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed. After recording but prior to issuance of a

Building Permit, Applicant shall provide the City Council and the City Solicitor's office with a copy of the recorded Special Permit.

16. Unless the context otherwise clearly requires, all references in the above conditions to "Applicant" shall also refer to Applicant's successors and assigns.

Yea: _____ - Nay: _____ - Absent: _____

ADOPTED

In City Council

Order No. 11-1002924

Adopted: _____ 2011

Approved by Mayor

Nancy E. Stevens

Date: _____ 2011

A TRUE COPY

ATTEST: _____ City Clerk



RECEIVED
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CITY OF MARLBOROUGH

2011 JUL 27 P 4:41

CITY OF MARLBOROUGH
Marlborough City Council
Robert J. Tunnera
Ward Four Councilor
140 Main Street
Marlborough, Massachusetts 01752
(508) 460-3711 TDD (508) 460-3610

July 27, 2011

Arthur G. Vigeant, President
Members of the City Council
City Hall, 140 Main Street
Marlborough, MA 01752

Reference: Zoning Amendment, Affordable Housing


Dear Councilors:

As a courtesy to Attorney Arthur Bergeron, a constituent of mine in Ward 4, I herewith submit for your consideration the enclosed proposed zoning ordinance change. Attorney Bergeron has advised that the change would be to the affordable housing section of the zoning ordinance. The current requirement is that 15% of the units in any project of 20 units or more be affordable, without giving any definition of affordability. The revised section would require that, instead, 15% of the units be countable in the Subsidized Housing Inventory that the State uses in figuring out whether a community has met its 10% requirement under Chapter 40B, the Comprehensive Permit Law.

Attorney Bergeron also explained his recollection that when the current section was written, it was specifically in response to Chapter 40B. Attorney Bergeron believes that the new language is probably closer to what the original authors intended.

Please refer this matter to the Urban Affairs Committee, the Marlborough Planning Board and set a date for a public hearing before the full body.

Sincerely,


Robert J. Tunnera
Ward Four City Councilor

/kb
enclosure

That the zoning ordinance of the City of Marlborough be amended by deleting Section 650-26(A)(1)(a) of the City Code as presently written and inserting in place thereof the following:

(a) Affordable Housing and Affordable Housing Units. The term “affordable housing” shall refer to “affordable housing units”. The term “affordable housing units” shall mean those units of housing that are countable in the so-called Subsidized Housing Inventory (SHI) or any subsequent housing inventory used by the Department of Housing and Community Development of the Commonwealth of Massachusetts to determine the number of housing units in a community that are countable in meeting the City’s obligation to maintain at least 10% of the total number of housing units in the city as affordable pursuant to Massachusetts General Laws Chapter 40B sections 20-23. Any development subject to this section shall provide that at least 15% of the housing units to be constructed are countable as affordable housing units in the SHI, or a sum not less than the amount necessary, in the opinion of the city council pursuant to the special permit process, to cause the construction of said number of affordable housing units shall be paid to the Marlborough Community Development Authority at such time as the city council shall determine.

MIRICK O'CONNELL

ATTORNEYS AT LAW

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2011 JUL 28 P 4: 24

Arthur P. Bergeron
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
abergeron@mirickoconnell.com
t 508.929.1652
f 508.463.1385

July 28, 2011

Councilor Arthur Vigeant
Marlborough City Council
City Hall
140 Main Street
Marlborough, MA 01752

Re: Melanson Development, Request for Land Transfer, Order # 10/11-1002732A

Dear Counselor Arthur Vigeant:

In the above referenced matter, my client, Melanson Development, hereby withdraws its request that the City transfer to it the City's fee interest in the land behind the Walker House. I was reminded by the City Solicitor that this matter is still pending despite the fact that my client's request to withdraw its special permit application was approved.

Very truly yours,



Arthur P. Bergeron

APB/alm

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

WORCESTER | WESTBOROUGH | BOSTON

www.mirickoconnell.com

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**CITY OF MARLBOROUGH
OFFICE OF THE CITY CLERK**

2011 JUL 28 P 12:31

APPLICATION TO CITY COUNCIL FOR ISSUANCE OF SPECIAL PERMIT

1. Name and address of Petitioner or Applicant:

Marlborough/Northborough Land Realty Trust

2. Specific Location of property including Assessor's Plate and Parcel Number.

Route 20 - Map 78, Lots 12, 14, 38 and 39

3. Name and address of owner of land if other than Petitioner or Applicant:

Same

4. Legal interest of Petitioner or Applicant (owner, ~~lessee, prospective owner, etc.~~)

5. Specific Zoning Ordinance under which the Special Permit is sought:

650-16, 650-17, 650-18
Article V Section _____ Paragraph _____ Sub-paragraph _____

6. Zoning District in which property in question is located:

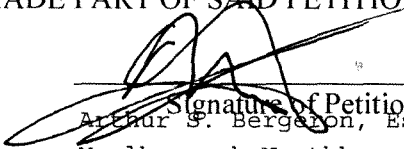
Business

7. Specific reason(s) for seeking Special Permit

To construct a development consisting of 5 multi-family residential
buildings, with clubhouse, containing a total of 290 units.

8. List of names and addresses of abutter. SEPARATE SHEET ATTACHED

PETITION IS HEREBY MADE FOR THE ISSUANCE OF A SPECIAL PERMIT BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH AND IS BASED ON THE WITHIN PETITION OR APPLICATION AS FILED HERewith AND MADE PART OF SAID PETITION.



Signature of Petitioner or Applicant
Arthur S. Bergeron, Esq., Attorney for
Marlborough Northborough Land Realty Trust
Address: _____

Mirick O'Connell

100 Front St., Worcester, MA 01608

Telephone No. (508) 791-8500

Date: 7/28/11

City Clerk's Office

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2011 JUL 26 P 2:40

**CITY OF MARLBOROUGH
OFFICE OF TRAFFIC COMMISSION
140 MAIN STREET
MARLBOROUGH, MASSACHUSETTS 01752**

Traffic Commission

The Regular Meeting of the Traffic Commission was held on Monday, May 6, 2011 at 11:00 a.m. in the City Council Committee Room, City Hall. Members present: Chairman Police Chief Mark Leonard, Vice Chairman – DPW Commissioner Ronald LaFreniere and City Clerk Lisa Thomas. Also present: City Engineer Thomas Cullen, Asst. City Engineer Tim Collins and City Councilor Don Landers. Minutes taken by: Karen Lambert, MPD Records Clerk.

1- Minutes

The minutes of the Traffic Commission meeting of Tuesday, April 26, 2011.

MOTION was made, seconded, duly VOTED:
To APPROVE.

2-New Business

2a. Communication from Ann Addeo, re: Sight distance concerns on Raffaele Rd. & Hosmer St.

Councilor Landers was in attendance to discuss this particular issue. Engineering presented a photo of the area and a photo of the tree in question. The tree is a large evergreen with branches that go all the way to the ground. Tim commented that the reconstruction project for this area is scheduled to begin tomorrow. The entire intersection is going to be improved. The tree is on private property. The Traffic Commission would have to consider it a problem in order for the homeowner to be approached. Ron said that the subject could at least be broached with the homeowner. The City can possibly take the tree down and plant another in a different location. It was determined that the City would make contact with the homeowner and then either Tom or Ron would contact Councilor Landers.

MOTION was made, seconded, duly VOTED to REFER to the DPW to handle and coordinate with Ward Councilor Landers.

2b. Bigelow St. truck exclusion update.

Tom Cullin received a letter from Kara Buzanoski, DPW director for the Town of Northboro, indicating that they would not be interested in supporting the request to detour trucks over Hudson Street and Solomon Pond Road. Chief Leonard commented that “we are back to square one.” By trying to accommodate Bigelow Street we are just reshuffling traffic elsewhere. He said that there may be some things we can do to address bus traffic but there is nothing we can do with respect to a truck exclusion. Ron commented that we have explored the possibilities and there are no reasonable alternatives.

MOTION was made, seconded, duly VOTED to ACCEPT and PLACE ON FILE (the letter from Northboro).

3-Old Business

3c. Stop signs on Bigelow Street.

Chief Leonard advised that this issue is basically on hold until all members are present. Tim Collins commented that there are actually two different speed zones on Bigelow...one area is 25 mph the other is 30 mph. Chief Leonard and Ron LaFreniere agreed that they would like to see at least one of the new speed signs in each direction. At the last meeting they discussed whether two or four signs would be better but now they may feel that four would be potentially “overkill”. Tim also commented that there are lots of areas of shade on Bigelow and that the signs are solar powered. They would need to be careful to find the best locations.

MOTION was made, seconded, duly VOTED to TABLE until all members are present for further discussion.

3g. Communication from Councilor Pope, re: Pedestrian crossing concerns near Hillside School.

The crosswalk and sidewalk have been installed on Robin Hill Street and the Commission now needs to vote on the amended regulation. Chief Leonard prepared the regulation as outlined by Tim Collins in his e-mail of 5/27/11.

MOTION was made, seconded, duly VOTED to APPROVE the amended regulation which adds the crosswalk on Robin Hill Street at the walkway in front of Hillside School.

3d. Traffic Commission rules and regulations update.

Lisa Thomas asked the Chief the status of this particular issue. Chief Leonard advised that he has discussed this with Mayor Stevens and that she understands the need for this to be addressed but that they are not exactly sure where the money will come from. She had mentioned some potential mitigation money that could be a possibility. At this point Mayor Stevens happened to step into the meeting and the Chief was able to ask her about the status again. She advised that the funds are currently available. There was approximately \$6,000 of mitigation money available for a variety of items, including the update to the Rules and Regs. Manual. Lisa advised that the next step would be for the

Chief to forward an e-mail to the company that would handle the update. Lisa has all of the information prepared and they can work together on the formal request. Lisa advised that she will be out of the office Wed. to Fri. of this week for a conference and asked if she could meet with the Chief next week. It is really just a matter of sending a few e-mails; however, she assumes that someone will also need to review portions of the manual as they are drafted before they are put into the final book. Tim mentioned that he has noticed some overlaps along the way and has addressed issues street by street as they come up but he is sure that there are others that have been overlooked.

MOTION was made, seconded, duly VOTED for Chief Leonard and Lisa Thomas to work to together on getting the online manual officially started.

(Side note: While Mayor Stevens was present, Chief Leonard explained to her the difficulty the Commission has been having in meeting the numbers for a quorum. Without the proper number of members present the meetings have had to be rescheduled several times. One of the positions was held by the City Planner. The City Planner position has been vacant for a long time and there is no plan to fill that position. The Fire Chief is also on the Commission and he will be out for a while due to health issues. Three members need to be present to have a quorum. The Chief asked about the possibility of adding a City Engineer to the Commission. Ron advised that this could provide an unfair slant if the Commission includes both himself and Engineering. The Commission discussed the possibility of having the person who is filling in for the City Planner start coming to the meetings, i.e. Steve Reid. Also the acting Fire Chief, Stan Clement, should also be advised of the meetings.)

3i. Communication from Councilor Clancy, re: parking at Rail Trail head on Lincoln Street.

Chief Leonard has been keeping an eye on this area and has seen cars parked here lately. Tim advised that the bid for this project was recently awarded to Perkins and that the project would start in the next few weeks. Ron said that temporary signs could be put in place advising "No Parking" at this location until the project gets going. The reconstruction project should address the issues here.

MOTION was made, seconded, duly VOTED to REFER to the DPW to install the appropriate temporary signs.

3l. Communication from Ann Richards, AMSA Charter School, re: School zone on Forest Street.

Tim Collins presented a diagram with the proposed school zone for AMSA. He advised that the State is still using the old regulations which indicate that the school zone extends from the building line. He also said that the DOT does not want the speed regulations in their layout. Discussion then followed relative to the speed limit signs being used at the end of the school zone...i.e. white regulatory signs vs. yellow advisory signs. It is not a designated speed zone; however, MUTCD says that some type of speed sign needs to be present when leaving the school zone. The rule of the road say the speed should be 30 mph near the housing development as the houses are less than 200 feet apart, i.e. thickly settled. The diagram shows a reduction in speed sign for the school zone prior to the 495 bridge. The speed limit is indicated as 20mph in the school zone when school is in

session, i.e. 7:15am to 8:15am and 2:00pm to 3:00pm with a 30mph yellow advisory sign leaving the school zone near the houses and an “end school zone sign” on the Rte. 495 side. This way the school zone can be enforced by police. Chief Leonard asked if Tim could send him an electronic copy of the diagram so that he can show it to AMSA and give them a status update. He also asked Tim to forward specifics so he could prepare the school zone regulation for the next meeting.

MOTION was made, seconded, duly VOTED to REFER to ENGINEERING to make amendments to the “proposed school zone” for AMSA and then forward to CHIEF Leonard to share status with AMSA.

3a. Municipal off street parking regulation.

MOTION was made, seconded, duly VOTED:
To TABLE.

3b. High School parking regulations.

MOTION was made, seconded, duly VOTED:
To TABLE.

3e. Communication from Councilor Tunnera, re: Parking issues on Belmont St.

MOTION was made, seconded, duly VOTED:
To TABLE.

3f. Communication from Capt. D’Amico, MFDm re: Parking on Newton St.

MOTION was made, seconded, duly VOTED:
To TABLE.

3h. Traffic regulations at the elderly housing properties.

MOTION was made, seconded, duly VOTED:
To TABLE.

3j. Communication from Pam Wilderman, re: parking on Belmont and Newton Streets.

MOTION was made, seconded, duly VOTED:
To TABLE.

Additional item not included on original agenda:

Suspension of Rules – Requested / Granted

Communication from Jo Daly re: Outcome for crosswalk concern on Lincoln Street at Renaissance Lofts.

Chief Leonard received another e-mail from Jo Daly looking for the outcome of her initial request. She commented that “cars do not yield and speeding toward pedestrians has not eased up at all”. Chief Leonard advised that this was an old item that was taken off the agenda because we thought they were all set. Tim advised that the Lofts were initially going to put in the crosswalk themselves. They came to the Traffic Commission wanting to know the best location. The City ended up painting the crosswalk (two 12 inch lines) but no signs were put up. The Commission determined that the City could put up the appropriate signs to highlight the crosswalk.

MOTION was made, seconded, duly VOTED to REFER to the DPW to install the appropriate advisory signage. The sidewalk is already regulated so there is no need to vote on the signs.

That there being no further business of the Traffic Commission held on this date, the meeting adjourned at 12:15 pm.

Respectfully submitted,

Karen L. Lambert - Records Clerk, MPD

List of documents and other exhibits used at the meeting:

- Meeting Agenda for Monday, June 6, 2011

-Includes the following attachments:

*Correspondence from Ann Addeo to Chief Leonard, dated 4/25/11, re: Site distance concerns at corner of Raffaele Rd. and Hosmer St.

*Correspondence from Ann Addeo to Mayor Stevens, dated 4/15/12, re: Site distance concerns at corner of Raffaele Rd. and Hosmer St. (large tree blocking view of oncoming traffic).

*Correspondence from Kara Buzanoski (DPW Director, Town of Northborough) to Tom Cullen, re: detour over Hudson Street and Solomon Pond Road.

*E-mail from Tom Cullen to Kara Buzanoski, dated 5/3/11, re: Marlborough – Potential Heavy Commercial Vehicle Exclusion on Bigelow Street – Proposed Alternate Truck Route.

*Follow up e-mail from Ron LaFreniere to Kara Buzanoski, dated 5/18/11, along with her response dated, 5/18/11.

*E-mail from Tom Cullen to Joseph Frawley (DOT), dated 5/3/11, re: Marlborough – Potential Heavy Commercial Vehicle Truck Exclusion on Bigelow Street – Proposed Alternate Route.

*E-mail from Joseph Frawley to Tom Cullen, dated 5/17/11, regarding same.

*E-mail from Tom Cullen to Ron LaFreniere and Chief Leonard, dated 5/18/11, regarding status of same.

*Formal correspondence from Kara Buzanoski, DPW Director for Town of Northborough to Tom Cullen, dated 5/23/11, regarding request for Detour over Hudson Street and Solomon Pond Road.

*E-mail from Tim Collins to Chief Leonard, dated 5/27/11, re: Hillside School Crosswalk.

*Proposed Regulation to amend Rules and Regs. of Traffic Commission to add crosswalk on Robin Hill Street.

*E-mail from Jo Daly to Chief Leonard, dated 5/27/11, re: Addition to Next Traffic Commission Meeting.

*E-mail from Kate LaRose to Chief Leonard, dated 3/24/11, regarding Jo Daly's original request regarding Crosswalk on Lincoln Street at Renaissance Lofts.

-Additional Handouts

*Aerial photo of intersection of Raffaele Rd. and Hosmer St.

*Photo of tree causing site concerns at intersection of Raffaele and Hosmer St.

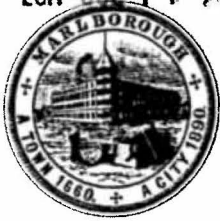
* Formal Diagram of proposed AMSA School Zone.

City of Marlborough

Commonwealth of Massachusetts

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CITY OF MARLBOROUGH

2011 JUL 19 A 10:08



PLANNING BOARD

Barbara L. Fenby, Chair
Colleen M. Hughes, Clerk
Philip J. Hodge
Edward F. Coveney
Clyde L. Johnson
Sean N. Fay

Carrie Lizotte, Board Secretary

Phone: (508) 460-3769

Fax: (508) 460-3736

Email: CLizotte@marlborough-ma.gov

June 6, 2011
7:00 PM

The Planning Board for the City of Marlborough met on Monday, June 6, 2011 in Memorial Hall, 3rd floor, City Hall, Marlborough, MA 01752. Members present: Barbara Fenby, Colleen Hughes, Philip Hodge, Edward Coveney and Sean Fay. Also present: Assistant City Engineer Timothy Collins.

MINUTES

May 9, 2011

On a motion by Ms. Hughes, seconded by Mr. Fay, it was duly voted:

To accept and file the meeting minutes.

May 23, 2011

On a motion by Ms. Hughes, seconded by Mr. Fay, it was duly voted:

To accept and file the meeting minutes.

CHAIRS BUSINESS

Correspondence from City Council

Shorter Street

The Planning Board asked the Public Services Committee to vote on the easement. The Committee has tabled the order and will it expire without action when the legislative term ends.

APPROVAL NOT REQUIRED PLAN

14 Eager Court

Mr. Cullen, the City Engineer for the City of Marlborough, has reviewed the ANR Plan submission dated May 10, 2011. After his full review, Mr. Cullen stated he was able to provide a favorable recommendation for approval of this ANR Plan.

On a motion by Ms. Hughes, seconded by Mr. Fay, it was duly voted:

To accept and file the correspondence.

On a motion by Mr. Fay, seconded by Mr. Coveney, it was duly voted:

To accept and endorse a plan of land believed to be Approval Not Required of John C and Mary I. Cabral of 14 Eager Court, Marlborough, MA 01752. Name of Engineer: Thomas Land Surveyors & Engineering Consultants, 265 Washington Street, Hudson, MA 01749. Deed of property recorded in South Middlesex Registry of Deeds Book 56255, Page 534-536: Assessors Map 45 Parcel 50.

424 South Street

Mr. Cullen, the City Engineer for the City of Marlborough, has reviewed the ANR Plan submission dated September 22, 2010 with a revision date of April 15, 2011. After his full review, Mr. Cullen stated he was able to provide a favorable recommendation for approval of this ANR Plan.

On a motion by Ms. Hughes, seconded by Mr. Fay, it was duly voted:

To accept and file the correspondence.

On a motion by Mr. Fay, seconded by Mr. Coveney, it was duly voted:

To accept and endorse a plan of land believed to be Approval Not Required of South Street Realty Trust, 424 South Street, Marlborough, MA 01752. Name of Engineer: Thomas Land Surveyors & Engineering Consultants, 265 Washington Street, Hudson, MA 01749. Deed of property recorded in South Middlesex Land Court Cert #199894, Land Court Decree #4975E Assessors Map 93 Parcel 32.

PUBLIC HEARING

SUBDIVISION PROGRESS REPORTS

City Engineer Update

Mr. Collins stated there is no update at this time.

Blackhorse Farms

Cider Mill Estates

West Ridge Estates

Completion schedules

Mr. Donald Seaberg provided new completion schedules for all three subdivisions. Mr. Seaberg stated that West Ridge Estates is almost at the final stages of completion and they have provided the City Engineer with their as-built plans.

Mr. Fay stated to Mr. Seaberg that the Board requested a report concerning the progress made on the subdivision infrastructure as it relates to the completion schedules submitted with the previous extension requests, not an updated completion schedule. Mr. Seaberg indicated that he would be able to provide the requested information.

On a motion by Ms. Hughes, seconded by Mr. Coveney it was duly voted:

To accept and file correspondence, to have the City Engineer review the completion schedules.

Blackhorse Farms Extension

Mr. Seaberg verbally requested an extension of their subdivision until June 21, 2011.

On a motion by Mr. Fay, seconded by Ms. Hughes it was duly voted:

To extend the subdivision approval until June 21, 2011.

Mauro Farms

The City Solicitor was asked by the Board to review the Tri-Partite agreement between the Board, the Developer and the Bank. In his research for the agreement he found a mistake in the Covenant, which cited the wrong subdivision plans. The signed and recorded plans show plan #75 of 2008 consists of 7 Sheets; C4-A through C4-F, not Sheets C5-A&B as stated on the covenant. He explained he drafted an Amended Covenant that should be signed by the developer and the Board, recorded with the registry and a copy of the recording should be in place before the Board signs the Tri-Partite agreement. Once the Planning Board has the recorded document, he stated the Board can then approve and sign the Tri-Partite agreement.

On a motion by Mr. Hodge, seconded by Mr. Fay it was duly voted:

To accept and file correspondence; to approve and sign the Amended Covenant.

PENDING SUBDIVISION PLANS: Updates and Discussion

PRELIMINARY/ OPEN SPACE SUBDIVISION SUBMITTALS

DEFINITIVE SUBDIVISION SUBMISSIONS

SCENIC ROADS

SIGNS

INFORMAL DISCUSSION

COMMUNICATIONS/CORRESPONDENCE

On a motion by Ms. Hughes, seconded by Mr. Coveney, it was duly voted:

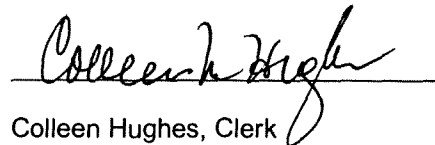
To accept all of the items listed under communications and/or correspondence.

On a motion by Mr. Coveney, seconded by Ms. Hughes, it was duly voted:

To adjourn at 7:30 p.m.

A TRUE COPY

ATTEST:


Colleen Hughes, Clerk

City of Marlborough

Commonwealth of Massachusetts

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CITY CLERK'S OFFICE
CITY OF MARLBOROUGH



JUL 19 A 10:08

PLANNING BOARD

Barbara L. Fenby, Chair
Colleen M. Hughes, Clerk
Philip J. Hodge
Edward F. Coveney
Clyde L. Johnson
Sean N. Fay

Carrie Lizotte, Board Secretary

Phone: (508) 460-3769

Fax: (508) 460-3736

Email: CLizotte@marlborough-ma.gov

June 20, 2011
7:00 PM

The Planning Board for the City of Marlborough met on Monday, June 20, 2011 in Memorial Hall, 3rd floor, City Hall, Marlborough, MA 01752. Members present: Acting Chair Philip Hodge, Colleen Hughes, Clyde Johnson and Sean Fay. Also present: City Engineer Thomas Cullen.

MINUTES

June 06, 2011

On a motion by Ms. Hughes, seconded by Mr. Fay, it was duly voted:

To accept and file the meeting minutes.

CHAIRS BUSINESS

Elm Farm Valley Estates

Correspondence from City Solicitor

The City Solicitor provided a draft of a Indemnification Agreement to the Board. He stated this is a working draft that needs to be discussed with the developers and their attorney prior to acceptance. The Board suggested placing it on the July 18, 2011 agenda.

APPROVAL NOT REQUIRED PLAN

108 Kelber Street

Submittal and Approval

Mr. Evangelous resubmitted his ANR plan to the Planning Board. The ANR's intent is to divide the original Lot 10 into Lot 10A and Parcel A with a total of 5,238S.F Parcel A is to be removed from Lot 10 and added to Lot 6; Lot 10A will have a remaining 20, 212 S.F and Lot 6A will have a total 33, 274.S.F. Mr. Cullen stated that he has reviewed the re-submittal dated April 7, 2011 and can give a favorable recommendation for the Planning Board to approve the ANR.

On a motion by Mr. Fay, seconded by Mr. Johnson, it was duly voted:

To accept and file the correspondence.

On a motion by Mr. Fay, seconded by Mr. Coveney, it was duly voted:

To accept and endorse a plan of land believed to be Approval Not Required of Victoria J. Evangelous of 108 Kelber Drive, Marlborough, MA 01752. Name of Engineer: Rim Engineering Co., Inc. 150 North Main Street, Mansfield, MA 02048. Deed of property recorded in South Middlesex Registry of Deeds Book 30815, Page 91: Assessors Map 43 Parcel 208 and Map 43 Parcel 204.

PUBLIC HEARING

SUBDIVISION PROGRESS REPORTS

City Engineer Update

Mr. Cullen provided a status update to the Board and stated not much has been completed since his last report.

Blackhorse Farms

Correspondence from Engineering

Mr. Cullen provided correspondence including all the approval dates, completion dates and timelines of the schedules for the subdivision. Under his review, the completion schedule has 60 working days to be completed. The Developer's completion schedule is within normal range of construction practice.

Mr. Cullen offered the following for the Planning Board to consider:

- Individuals have purchased homes under the impression the subdivision would be done in a timely manner, it was approved 7 years ago;
- Little activity has been performed in the past year;
- Recommends the Planning Board only entertain a one year extension;
- Recommends the developer provide a bi-monthly construction schedule as well as actual start dates and completion of all tasks.

Mr. Fay asked if the developer has seen Mr. Cullen's review. Mr. Donald Seaberg stated that he has seen the review and he would agree with the terms. Mr. Fay also stated that he was concerned about the remaining utilities infrastructure. Mr. Seaberg stated that the infrastructure has been put in place. Mr. Seaberg stated that the developer is planning on paving, installing curbing and the roadside trees to location 5+50 with work slated to begin this August.

On a motion by Mr. Fay, seconded by Ms. Hughes, it was duly voted:

To accept and file correspondence, extend the subdivision approval until July 1, 2012 and have the developer provide bi-monthly completion schedules.

Cider Mill Estates

Correspondence from Engineering

Mr. Cullen provided correspondence including all the approval dates, completion dates and the subdivision dates for this subdivision. He noted that the submitted completion schedule shows approximately 87 working days as indicated to complete this subdivision. Mr. Cullen stated that

he believes that the assigned tasks can be completed within normal completion practices and the provided schedule coincides with the completion schedule.

Mr. Cullen is offering the following for the Planning Board to consider:

- Individuals have purchased homes under the impression the subdivision would be done in a timely manner (8 years);
- Little activity has been performed in the past year;
- Recommends the Planning Board only entertain a one year extension;
- Recommends the developer provide a bi-monthly construction schedule as well as actual start dates and completion of all tasks.

Mr. Fay questioned if the Board could entertain the subdivision completion schedule for this subdivision when there has been no subdivision extension granted. Mrs. Lizotte stated that the original intent when the developer's other subdivisions were under review to extend all the subdivisions however the main focus became the Carisbrooke II subdivision. The discussion came back to the bonding and if the bonding was still valid. Mr. Rider stated that he would review the bonding and then report back to the Planning Board. Mr. Seaberg was instructed to provide the Board with an extension request.

On a motion by Mr. Fay, seconded by Ms. Hughes, it was duly voted:

To table until the next meeting.

On a motion by Mr. Fay, seconded by Ms. Hughes, it was the duly voted:

To move up agenda item 5E.

Mauro Farms

Tri-partite Agreement

Mr. Pezzoni provided the recorded copy of the amended Covenant from the Registry of Deeds. He is also asking for the release of all lots. Mrs. Lizotte reminded him that the Tri-Partite needs to be recorded prior to the release and that the Planning Board will not do a blanket release as stated in a letter to the developer. Mr. Pezzoni argued that the bonding was sufficient and that his client will have the subdivision completed in the two years as stated or he will ask for an extension. Mr. Pezzoni state that the Section 81U required the Planning Board to release all lots once the bond was established.

The Planning Board reviewed the subdivision plans with Mr. Pezzoni, after some concession on both ends, it was verbally agreed to release Lots 1 through 19 and Lots 22 through 25 once the Tri-Partite was recorded.

With Dr. Fenby not returning for several weeks, it was decided that Mr. Hodge would sign the Certificate of Performance.

On a motion by Ms. Hughes, seconded by Mr. Johnson it was duly voted:

To endorse the Tri-Partite agreement, to authorize Mr. Hodge to endorse the Performance Guarantee and release Lots 1 through 19 and Lots 22 through 25 once proof of the recorded Tri-Partite agreement has been received .

Forest Trail*Detention basin fencing*

The Planning Board asked Mr. Cullen to review the applicants request to modify the detention basin fencing. Mr. Cullen has reviewed the plans and stated the following:

- Westerly fence line is to shift easterly but must maintain a 10' level maintenance area between 248 to the proposed wall;
- Proponent has proposed a versa lock wall;
- Proponent shall identify the type of fencing and height of fence from the proposed ground elevation to the top of the proposed fence.

Mr. Cullen also suggested that the proponent should have a revised as-built after the work has been completed. Mr. Hodge asked if the proponent sells the property before work is completed, who would perform the work? It was suggested to the homeowner provide a completion schedule to the Board when the work will be completed.

On a motion by Ms. Hughes, seconded by Mr. Fay it was duly voted:

To accept and file correspondence, to endorse Mr. Cullen's recommendations and to have the proponent provide a completion schedule and a revised as-built after work is completed.

West Ridge Estates*Engineering Correspondence*

Mr. Cullen provided correspondence including all the approval dates, completion dates and the subdivision dates for this subdivision. He noted that the submitted schedule shows approximately 17 working days to complete this subdivision. Mr. Cullen stated that he believes that the assigned tasks can be completed within normal completion practices and coincides with the completion schedule.

Mr. Cullen offered the following for the Planning Board to consider:

- Individuals have purchased homes under the impression the subdivision would be done in a timely manner (11 years);
- Substantial amount of work activated were performed last construction season;
- Recommends the Planning Board to entertain a one year extension to allow trees to mature, punch lists completed and provide enough time for the City to review the as-built and acceptance documents.

Mr. Cullen stated out of the three subdivisions, this one is close to completion. His office has already received the as-builts and is waiting to discuss the completion punch lists with the developer.

On a motion by Mr. Fay, seconded by Mr. Johnson, it was duly voted:

To accept and file correspondence, to extend the subdivision approval to July 1, 2012.

PENDING SUBDIVISION PLANS: Updates and Discussion**PRELIMINARY/ OPEN SPACE SUBDIVISION SUBMITTALS****DEFINITIVE SUBDIVISION SUBMISSIONS****SCENIC ROADS**

SIGNS

INFORMAL DISCUSSION

COMMUNICATIONS/CORRESPONDENCE

On a motion by Ms. Hughes, seconded by Mr. Fay, it was duly voted:

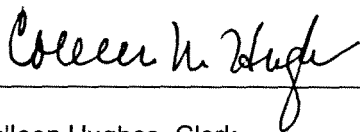
To accept all of the items listed under communications and/or correspondence.

On a motion by Mr. Fay, seconded by Ms. Hughes, it was duly voted:

To adjourn at 9:15 p.m.

A TRUE COPY

ATTEST:



Colleen Hughes, Clerk